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# **COMMERCE COUNCIL MEETING PACKET**

**MONDAY, APRIL 24, 2006  
9:00 A.M. – 12:00 P.M.  
ROOM 404-HOB**

# **Council Meeting Notice**

## **HOUSE OF REPRESENTATIVES**

**Speaker Allan G. Bense**

### **Commerce Council**

**Start Date and Time:** Monday, April 24, 2006 09:00 am

**End Date and Time:** Monday, April 24, 2006 12:00 pm

**Location:** 404 HOB

**Duration:** 3.00 hrs

#### **Consideration of the following bill(s):**

HB 7225 CS Property and Casualty Insurance by Insurance Committee

HB 7227 CS Florida Hurricane Damage Prevention Trust Fund by Insurance Committee

HB 1473 CS (IF RECEIVED) -- Energy by Hasner

After the 45th day of a regular session, the amendment deadline for nonappointed members is two hours prior to the scheduled meeting.

**NOTICE FINALIZED on 04/21/2006 16:08 by GLATFELTER.SUKIE**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7225 CS      PCB IN 06-01      Property and Casualty Insurance  
**SPONSOR(S):** Insurance Committee  
**TIED BILLS:** HB 7227      **IDEN./SIM. BILLS:** SB 1980/SB 2166

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Insurance Committee	10 Y, 6 N	Callaway	Cooper
1) Fiscal Council	13 Y, 4 N, w/CS	Belcher	Kelly
2) Commerce Council		Callaway <i>lde</i>	Randle <i>TR</i>
3)			
4)			
5)			

### SUMMARY ANALYSIS

The bill makes the following major changes to property insurance affecting homeowners in Florida:

**Florida Hurricane Catastrophe Fund (FHCF):** Includes a rapid cash buildup of 25% for the FHCF. Extends the date medical malpractice insurance is excluded from the FHCF assessment base.

**Hurricane Mitigation:** Establishes a hurricane mitigation endowment fund to allow homeowners to obtain no-interest loans to implement hurricane mitigation measures for their homes. Establishes a four-part hurricane mitigation program to provide hurricane inspection grants; grants for installation of hurricane mitigation measures for homeowners, local governments, and nonprofits; loans for installation of hurricane mitigation measures; and public awareness/education.

**Office of Insurance Regulation/Rate Review:** Allows property insurers to vary their approved insurance rate up or down 5% statewide or 10% per rating territory without obtaining regulatory approval of the change. Restricts the Office of Insurance Regulation (OIR) and the Insurance Consumer Advocate from questioning insurers about certain aspects of the hurricane models insurers use to justify a rate filing. Restricts the OIR from using the public hurricane model in rate filings until it is found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology. Requires the OIR to adopt standard emergency rules to be used after a natural disaster and gives the Insurance Commissioner power to adopt emergency rules.

**Citizens Property Insurance Corporation (Citizens):** Requires Citizens to treat homestead and nonhomestead property differently regarding rate setting and deficit assessment. Establishes rates based upon a 100 year possible maximum loss (PML) for homestead and 250 year PML for nonhomestead. Allows authorized insurers to establish rates for nonhomestead without being subject to review for excessiveness. Reallocates Citizens' deficit assessments and requires Citizens' homestead policyholders to pay a surcharge to cover their portion of a deficit assessment. Prohibits Citizens from insuring homes insured for \$1 million or more or condominium unit owner's contents and dwelling policies insured for \$1 million or more. Allows authorized insurers to write policies excluded from Citizens under the \$1 million exclusion without rate regulation for excessiveness. Requires Citizens to purchase reinsurance for the nonhomestead account. Allows Citizens to include a residual market risk load in its rates. Restricts payment of take-out bonuses by Citizens to \$100 per policy. Extends the reduction of Citizens' wind-only zones. Strengthens ethics and fraud reporting requirements for Citizens' managers and employees.

**Other Major Changes:** Requires replacement costs to be paid in advance on dwellings only. Authorizes the Florida Insurance Guaranty Association to issue revenue bonds for hurricane recovery. Creates a Task Force to study issues relating to hurricane insurance and mitigation for mobile homes. Requires reports from OIR on the insurability of attached and free-standing structures and on the feasibility of allowing policyholders to reduce their hurricane deductibles for mitigation steps taken.

The bill appropriates \$500 million from the General Revenue Fund for the endowment and damage mitigation programs. The bill also appropriates \$920 million from the General Revenue Fund to cover the regular assessments for the 2005 Citizens' deficit accounts. The bill appropriates \$675,000 from the Insurance Regulatory Trust Fund to OIR to fund costs associated with the bill. The bill impacts the private sector. See Fiscal Section for details.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h7225c.CC.doc  
**DATE:** 4/21/2006



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Promote Personal Responsibility:** Establishing a no-interest loan program and providing for wind certification and hurricane mitigation inspections provides an opportunity for homeowners to take responsibility for protecting their homes.

Placing the hurricane deductible at 5% for all nonhomestead properties in Citizens valued at \$250,000 or more may require homeowners of such properties to pay more in out-of-pocket costs for deductibles.

Excluding homes insured for \$1 million or more from Citizens will require those homeowners to find insurance coverage from surplus lines insurers or authorized insurers writing on an individual rate basis.

Citizens' nonhomestead policyholders must satisfy any deficit among themselves rather than relying on all Florida homeowners to contribute to the deficit reduction.

Providing insurance agents and their employees with immunity relating to coverage differences and insolvencies of insurers participating in Citizens' depopulation will protect these individuals from suit.

**Limited Government:** Allowing insurers to flex rate residential property will allow rate variations without approval by the OIR.

Providing automatic approval of rate changes for private insurers' filed rate for the wind portion of a policy eligible for the Citizens' High Risk Account if the rate change is less than the Citizens' approved rate for a similar policy will allow rate variations without approval by the OIR.

Requiring the OIR to enact emergency rules covering insurer's actions after a natural disaster will prevent the OIR from having to issue such rules after each natural disaster.

Excluding homes valued at \$1 million or more from Citizens will decrease the number of policies in this quasi-public insurer.

Requiring nonhomestead policyholder to get a declination from surplus lines insurers and authorized insurers before being eligible for Citizens should decrease the number of policies in this quasi-public insurer.

The bill creates an endowment and grant program within the Department of Financial Services (DFS) and authorizes new rule-making.

**Ensure Lower Taxes:** Requiring Citizens' homestead property owners to be included in the deficit calculation and division will spread the deficit assessment over more policyholders, thus reducing the amount of any assessment.

**Empower Families:** The bill's provisions relating to no-interest loans for hurricane mitigation measures and grants for hurricane inspections will help harden homes to prevent or reduce hurricane damage.

#### B. EFFECT OF PROPOSED CHANGES:

#### The 2004 and 2005 Hurricane Seasons

The 2004 hurricane season was particularly destructive for Florida, with four hurricanes causing extensive damage throughout the state. All four hurricanes occurred within a 45-day period beginning August 13, 2004, when Hurricane Charley made landfall as a category 4 hurricane with wind speeds of 145 miles per hour; followed on September 4 by Hurricane Frances, a Category 2 hurricane with wind speeds of 105 miles per hour. Next, Hurricane Ivan struck on September 16 followed by Hurricane Jeanne on September 26, which were both Category 3 hurricanes with respective winds speeds of 130 and 120 miles per hour at landfall. The paths of the hurricanes indicated virtually no part of Florida is immune from hurricane risk. Allegedly, the 2004 hurricanes caused damage to an estimated one in every five homes in Florida. Every county in Florida but Liberty County reported losses as a result of the 2004 hurricane season.<sup>1</sup>

The four hurricanes in 2004 are responsible for 1.7 million insurance claims and \$26.1 billion dollars of insured losses in the Florida market.<sup>2</sup> The primary insurers incurred \$11.3 billion in losses (of this amount, Citizens incurred \$1.8 billion), the reinsurers incurred \$5.75 billion, and the Florida Hurricane Catastrophe Fund (FHCF) incurred \$3.85 billion.<sup>3</sup>

For the most part, the insurance and reinsurance industry recapitalized after the 2004 hurricane season. That is, the capital lost by primary insurers and reinsurers was replenished. Additionally, the FHCF was able to pay its share of the losses out of cash reserves and maintain a cash balance to use to pay claims to start the 2005 hurricane season.

However, as the state was still recovering, recapitalizing, and rebuilding from the 2004 hurricanes, the 2005 season began. The 2005 hurricane season was also destructive for Florida, with four hurricanes hitting Florida for the second year in a row.

Hurricane Dennis hit Florida in the early part of hurricane season, making landfall on July 10, 2005, on Santa Rosa Island with maximum sustained winds of 121 miles per hour, making it a category three hurricane. Its center moved across the western Florida panhandle into southwest Alabama.<sup>4</sup>

The estimated gross property loss in Florida caused by Hurricane Dennis is close to \$1.4 billion. Over 57,000 insurance claims resulted from this hurricane.<sup>5</sup>

Hurricane Katrina hit Florida on August 25, 2005, and moved west across the southern portion of the state and into the Gulf of Mexico. At landfall, Hurricane Katrina was a category 1 storm with maximum sustained winds of 81 miles per hour.<sup>6</sup> Although Florida did not sustain as severe damage as New Orleans, Louisiana; Biloxi, Mississippi and surrounding areas, Hurricane Katrina caused an estimated gross property loss in Florida of approximately \$1.8 billion due to almost 162,000 insurance claims.<sup>7</sup>

The next hurricane to hit Florida in 2005 was Hurricane Rita which made landfall on September 20, 2005. Like Hurricane Katrina, Hurricane Rita moved west across the southern part of the state with maximum sustained winds of 105 miles per hour, making it a category 2 hurricane.<sup>8</sup> It is estimated that Hurricane Rita caused an estimated gross property loss in Florida of \$157 million due to an estimated 4,000 insurance claims.<sup>9</sup>

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<sup>1</sup> The Property Insurance Market in Florida 2004: The Difference a Decade Makes; prepared by the OIR; March 2005, page 5.

<sup>2</sup> The Task Force on Long Term Solutions to Florida's Hurricane Insurance Market report adopted March 6, 2006, page 11. (citing the OIR's disaster reporting data system)

<sup>3</sup> Id.

<sup>4</sup> [http://www.nhc.noaa.gov/pdf/TCR-AL042005\\_Dennis.pdf](http://www.nhc.noaa.gov/pdf/TCR-AL042005_Dennis.pdf) (last viewed February 6, 2006).

<sup>5</sup> Information received from the OIR on March 10, 2006, based on data collected as of February 28, 2006. The loss estimate includes all lines of insurance, not just residential.

<sup>6</sup> [http://www.nhc.noaa.gov/pdf/TCR-AL122005\\_Katrina.pdf](http://www.nhc.noaa.gov/pdf/TCR-AL122005_Katrina.pdf) (last viewed March 9, 2006).

<sup>7</sup> Information received from the OIR on March 10, 2006, based on data collected as of February 28, 2006. The loss estimate includes all lines of insurance, not just residential.

<sup>8</sup> [http://www.nhc.noaa.gov/archive/2005/pub/al182005.public\\_a.013.shtml?](http://www.nhc.noaa.gov/archive/2005/pub/al182005.public_a.013.shtml?) (last viewed March 12, 2006).

<sup>9</sup> Id.

Hurricane Wilma moved across the southern portion of Florida taking the opposite path of Hurricanes Katrina and Rita. It moved eastward across Florida from the Gulf of Mexico to the Atlantic Ocean. It made landfall on October 24, 2005, near Cape Romano, Florida with wind speeds of 121 miles per hour, a category 3 hurricane.<sup>10</sup> Insured losses from Hurricane Wilma are estimated at \$10.8 billion, making it the costliest hurricane for Florida in 2005.<sup>11</sup> As of March 30, 2005, over 950,000 insurance claims have been filed for Hurricane Wilma and insurers have paid claims totaling over \$8 million.<sup>12</sup>

Claim and loss statistics and the loss distribution among primary insurers, reinsurance, and the FHCF are still in development and being reported, but the four 2005 storms are estimated to have generated a combined 1 million claims and an estimated \$14 billion in insured losses in Florida.<sup>13</sup> As of February 28, 2006, insurers have already paid over \$4 billion in insurance proceeds for claims from the 2005 hurricane season.<sup>14</sup>

Insurers' losses from the 2004 and 2005 hurricanes as well as meteorological expectations that the increase in hurricane activity will continue for the foreseeable future have caused both insurers and reinsurers to reevaluate their tolerance for risk as well as the related amount of additional capital they are willing to commit to Florida. Some insurers have added new underwriting restrictions to reflect changes in their exposure tolerance. Others have nonrenewed or cancelled policies. Still others have raised rates. In fact, since 2004 the top five insurers by market share have raised rates by an average of 28.6% with an average per year increase of 11.8%.<sup>15</sup>

Since the 2005 hurricanes, the reinsurance market has partly recapitalized, but not yet fully replenished their investment capital.<sup>16</sup> According to reports from the insurance industry, the reinsurance market is showing some signs that reinsurers are reconsidering the risk/return relationships available when compared with other investment opportunities. Reinsurance rates for wind reinsurance along the Gulf states are increasing for reinsurance purchased in 2006. In addition, reinsurers are increasing the retention levels for reinsurance.

### **Florida Hurricane Catastrophe Fund (FHCF or fund)**

#### **Background**

The Florida Hurricane Catastrophe Fund (FHCF or "fund") is a tax-exempt trust fund created after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers.<sup>17</sup> All insurers who write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF. The FHCF is administered by the State Board of Administration (SBA) and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent) of hurricane losses above the insurer's retention/deductible.

Because the FHCF provides insurers an additional source of reinsurance to what is available in the private market, insurers are generally able to write more residential property insurance in the state than could otherwise be written. Because reinsurance purchased through the FHCF is significantly less expensive than private reinsurance, the FHCF also acts to lower residential property insurance premiums for consumers.

<sup>10</sup> [http://www.nhc.noaa.gov/pdf/TCR-AL242005\\_Wilma.pdf](http://www.nhc.noaa.gov/pdf/TCR-AL242005_Wilma.pdf) (last viewed March 9, 2006).

<sup>11</sup> Hurricane Season 2005 Hurricane Wilma Reporting Summaries as of March 30, 2005, prepared by the OIR.

<sup>12</sup> Id.

<sup>13</sup> Information received from the OIR on March 10, 2006, based on data collected as of February 28, 2006.

<sup>14</sup> Information received from the OIR on March 10, 2006, based on data collected as of February 28, 2006.

<sup>15</sup> Personal communication from a representative of the Office of Insurance Regulation on file with the Insurance Committee.

<sup>16</sup> The Task Force on Long Term Solutions to Florida's Hurricane Insurance Market report adopted March 6, 2006, page 12. (citing the Reinsurance Association of America).

<sup>17</sup> s. 215.555, F.S. (2005).

The FHCF must charge insurers the “actuarially indicated” premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology. Each insurer’s “reimbursement premium” is different, based on the insured value of the residential property it insures, their location, construction type, deductible amounts, and other factors.

Under current law, the maximum amount the FHCF must pay in any 1 year is \$15 billion, adjusted annually based on the percentage growth in fund exposure, but not to exceed the dollar growth in the cash balance of the fund.<sup>18</sup> The total industry retention is \$4.5 billion per hurricane, also adjusted annually based on the FHCF’s exposure (regardless of any change in the FHCF’s cash balance).<sup>19</sup>

The FHCF generally operates on a “contract year.” The contract year runs from June 1<sup>st</sup> to May 31<sup>st</sup> of the next calendar year. The start of hurricane season coincides with the start of the fund’s contract year.

For the current 2005-06 contract year (June 1, 2005 – May 31, 2006), the insurance industry as a whole has an aggregate retention of \$4.5 billion, meaning the total of all individual insurer retentions/deductibles will hypothetically total to \$4.5 billion per event, assuming all participating insurers reached their retention. Although the insurance industry’s aggregate deductible/retention totals \$4.5 billion, loss recovery from the FHCF is based on an individual insurer meeting its own retention prior to losses being reimbursed. The industry aggregate retention is expected to grow to \$5.4 billion for the 2006-2007 contract year.

Each insurer must meet a retention/deductible before FHCF monies are available to pay claims. The retention level for each insurer is different because the retention level is based on the amount of premium the insurer pays to the FHCF. Insurers with a high FHCF premium will absorb more as a retention/deductible than an insurer with a low FHCF premium. The insurer must meet its retention level for each storm in a hurricane season before the FHCF will step in to pay its claims. For insurers who experience losses due to multiple storms in a year, the insurer’s full retention is applied to the two storms causing its two largest losses and its retention for the other storms causing loss is one-third of the full retention.<sup>20</sup>

As with the FHCF retention/deductible levels, every insurer participating in the FHCF has coverage based on its FHCF reimbursement premium. Each insurer has a maximum amount of coverage the FHCF will pay for claims each year. The maximum amount of coverage is different for each insurer because it is linked directly to the amount of premiums the insurer pays to the FHCF. Thus, insurers that pay higher premiums to the FHCF have more coverage than those that pay lower premiums. For the current contract year (2005-2006), the insurance industry as a whole is covered for up to \$15 billion, meaning \$15 billion is the most the FHCF will pay to the insurance industry on claims for a hurricane season. The coverage limit for the fund for the 2006-2007 contract year will remain at \$15 billion because the fund’s capacity does not grow in years the fund’s cash balance declines. This will happen in 2005 due to payouts on 2005 hurricane losses.

Additionally, insurers also choose a percentage level of reimbursement by the FHCF. By statute, insurers can select 45, 75, or 90 percent coverage reimbursement for losses that exceed its deductible/retention for each hurricane.<sup>21</sup> Most insurers choose the 90 percent reimbursement percentage.<sup>22</sup> This means once an insurer triggers FHCF coverage, 90 percent of its losses will be covered by the FHCF, up to the insurer’s limit of coverage. Insurers may purchase additional reinsurance in the private market to cover their hurricane losses for amounts below the retention,

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<sup>18</sup> s. 215.555(4)(c)1., F.S. (2005).

<sup>19</sup> s. 215.555(1)(e)1., F.S. (2005).

<sup>20</sup> s. 215.555(1)(e)4., F.S. (2005).

<sup>21</sup> s. 215.555(1)(e)2., F.S. (2005).

<sup>22</sup> Florida Hurricane Catastrophe Fund, Fiscal Year 2003-2004 Annual Report 23.

amounts above their reimbursement limit, or for the coinsurance amount (e.g., 10%) that is the insurer's responsibility for the layer of coverage provided by the FHCF.

If the cash balance of the fund is not sufficient to cover losses, the law allows the issuance of revenue bonds, which are funded by emergency assessments on property and casualty policyholders.<sup>23</sup>

The FHCF is authorized to levy emergency assessments against all property and casualty insurance premiums paid by policyholders (other than workers' compensation and, until June 1, 2007, medical malpractice), including surplus lines policyholders, when reimbursement premiums and other fund resources are insufficient to cover the fund's obligations.<sup>24</sup> Annual assessments (which have never been levied) are capped at 6% of premium with respect to losses from any 1 year and a maximum of 10% of premium to fund hurricane losses from multiple years.<sup>25</sup>

The FHCF is expected to pay out \$3.8 billion to insurers as a result of the 2004 hurricanes; to date, the fund has already paid \$3.5 billion to insurers. Because the amount paid in 2004 was less than the FHCF's cash balance, bonding was not necessary. However, the loss estimates for the FHCF are estimates and as losses develop, the actual payments may exceed the current estimates.

For the current 2005-2006 contract year, the fund's \$15 billion capacity consists of \$3 billion in cash (before losses) and \$12 billion in bonding capacity. The FHCF was initially expected to pay out at least \$3.3 billion to insurers as a result of the 2005 hurricane season, of which about \$2.2 billion had actually been paid by the fund to insurers. The remainder is paid out as insurers request reimbursement and provide proof of losses. However, the loss estimates for 2005 have recently been significantly increased based on the latest loss reports, which will require bonding and assessments. The fund had previously estimated a cash shortfall of \$264 million based solely on insurer loss reports. However, on April 5, 2006, representatives of the fund stated the latest loss estimates will result in a deficit of \$1.55 billion.<sup>26</sup> This is based on both reported losses and an estimate of incurred but not reported losses. But, the \$1.55 billion deficit will be reduced to \$1.35 billion, due to an estimated \$200 million in revenue from the 25 percent "rapid cash build up" factor the SBA approved for the 2006 premium formula.

It is anticipated the fund will have to bond in order to defray its deficit. Bonding will result in assessments against all property and casualty insurance policyholders except workers' compensation and medical malpractice. Given the broad assessment base, it is unlikely the assessments will exceed 1% of premium, but is dependent on the term of the debt and the unknown, potential losses for the 2006-2007 contract year and subsequent years.

Because the FHCF is not likely to have cash to carry over to fund claims resulting from the 2006 hurricane season, it will have to rely solely on premiums collected in 2006 to reimburse insurers for losses. This makes bonding more likely if the fund has to pay claims as a result of 2006 hurricanes. The fund's anticipated premium revenue for 2006 equals \$750 million. However, premiums to the FHCF are paid by insurers in three installments. Thus, \$750 million is not likely to be available to pay claims at the start of the 2006-2007 contract year (June 1, 2006). Rather, the fund anticipates a cash inflow of \$250 million by August 1, 2006, another \$250 million by October 1, 2006, and a final \$250 million by December 1, 2006. Thus, should an early season hurricane occur, it may be necessary for the FHCF to borrow money to cover losses. For low amounts of losses, this could be done with a simple bridge loan. For large amounts of loss, revenue bonds would need to be issued.

In summary, from the inception of the fund in 1993 until the 2004 hurricane season, the fund paid insurers for claims for only two hurricanes, Hurricanes Erin and Opal in 1995. Until 2004, the amount the FHCF paid to insurers totaled approximately \$13 million. Thus, going into the 2004 hurricane season the FHCF had accumulated over \$6 billion in cash. As a result of the 2004 hurricanes, the fund

<sup>23</sup> s. 215.555(6)(a)1., F.S. (2005); s. 215.555(6)(b)1., F.S. (2005).

<sup>24</sup> s. 215.555(6)(b)1., F.S. (2005); s. 215.555(6)(b)(10), F.S. (2005).

<sup>25</sup> s. 215.555(6)(b)2., F.S. (2005).

<sup>26</sup> Testimony of a representative of the Florida Hurricane Catastrophe Fund at the Senate Banking and Insurance Meeting.

has spent or expects to spend almost \$3.8 billion of its cash reimbursing insurers for hurricane losses. Going into the 2005 hurricane season, the fund's cash had decreased to \$3 billion. With reimbursement to insurers for 2005 hurricane losses expected to be \$3.3 billion, the fund anticipates it will start the 2006 hurricane season with no cash. Thus, it is important to note that the \$6 billion it took the FHCF to accumulate over ten years was depleted in just two years.

The bill requires the fund to include and use a rapid cash buildup factor of 25% in its reimbursement premium formula used to calculate each insurer's premium to the fund. Current law allows its use but it has never been required.

Requiring a rapid cash buildup of 25% will allow the fund to collect \$200 million more in premium for the 2006 contract year. This amount is in addition to the estimated \$750 million the fund will collect due to normal premiums. Including a rapid cash buildup in the fund will not increase the amount of fund coverage insurers have; insurers will simply pay more in premiums due to the rapid cash buildup for the same amount of coverage.

Monies collected via a rapid cash buildup implemented in 2006 could be used to pay 2005 claims against the FHCF filed by insurers if the fund amends its administrative rule covering bonding to allow this use. According to the fund, it is currently pursuing such a rule change. The extra premium generated from a rapid cash buildup would put the fund in a better financial position in case their estimates of the claims from insurers from the 2005 hurricane season are too low. In such a case bonding may be prevented or reduced if the rapid cash buildup monies can be used to pay the 2005 claims.

According to the Task Force on Long-Term Solutions to Florida's Hurricane Insurance Market's report adopted March 6, 2006, including a 25% rapid cash buildup in the fund premium is estimated to increase the premium homeowners pay for residential property insurance by 3% on average. However, the premium increase per policyholder will vary.

The bill also deletes language that appears to be obsolete requiring a preference in reimbursement to limited apportionment companies when the cash balance is below \$2 billion. This language was in the law when the fund was designed to make payments at year end, due to each insurer's maximum share not being known until that time. Changes in 1995 established recovery limits for each insurer, which has enabled the fund to reimburse insurers almost immediately (2 to 7 days). The current language could bring into question whether the fund should reserve cash for limited apportionment companies, even if other insurers have claims owing, which could result in delaying payment or earlier or unnecessary bonding.

The bill also extends the date that medical malpractice insurers are exempt from the assessment base for FHCF emergency assessments from June 1, 2007, to June 1, 2010. The provision exempting medical malpractice insurers from the emergency assessment base was added to the law in 2004. As of 2004, medical malpractice insurers wrote approximately \$860 million in premiums, translating to 3% of the FHCF assessment base.<sup>27</sup> Extending the exemption for these insurers means if the fund has to assess insurers to pay for revenue bonds, it will be unable to levy assessments against medical malpractice insurers. It is important to note that workers' compensation insurers are also exempt from the fund's emergency assessment base.

The bill makes a clarifying change to the definition of "losses" for fund purposes. The change clarifies the fund does not reimburse insurers for claims paid for loss of rent or loss of rental income. To date, the fund has not reimbursed those types of "losses."

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<sup>27</sup> Florida Office of Insurance Regulation 2005 Annual Report on Medical Malpractice Financial Information Closed Claim Database and Rate Filings dated October 1, 2005, page 14.

The bill also makes a clarifying change regarding how the FHCF capacity is adjusted. Current law allows the fund's \$15 billion capacity to grow with exposure; however, the growth cannot increase more than the growth of the fund's cash balance. Under a literal interpretation of this language, the fund's cash balance could grow in a year due to bonding of the fund and thus the fund's capacity would grow too. However, under this circumstance the fund's financial picture would be troublesome as it would have to resort to bonding to obtain sufficient cash to pay claims. Thus, under that financial picture, the fund's capacity should not grow because any growth exposes insurers to more bonding potential. Due to this unintended consequence, the bill amends current law to allow the fund's capacity growth to be limited by the balance of the fund on December 31<sup>st</sup>. The balance of the fund on December 31<sup>st</sup> is required to be defined by rule and the fund currently has a rule defining how to calculate the balance of the fund on December 31<sup>st</sup>.

### **Hurricane Mitigation**

The nature of Florida's population, housing growth, and coastal development means a substantial portion of Florida's housing stock could dramatically benefit from mitigation techniques. Any meaningful, long-term solution to the Florida hurricane insurance market should recognize the critical link between structures' wind-resistance and survivability.

The average single family home in Florida is 26 years old; however, the average age of single family homes in Broward, Miami-Dade, and Palm Beach counties is over 30 years old.<sup>28</sup> According to the report issued in 2005 by the Multihazard Mitigation Council of the National Institute of Building Sciences, "*Natural Hazard Mitigation Saves: An Independent Study to Assess the Future Savings from Mitigation Activities*", each dollar spent on mitigation, saves society an average of four dollars.

Increasing wind-resistance of buildings on the front end (at the time of construction) or retroactively through retrofitting will deliver a return on investment by reducing damage and therefore insurance losses. Hurricane mitigation techniques may include reinforcing roof-to-wall connections, reinforcing roof systems, use of superior roof material attachment methods, placement of secondary water barrier on roof decking and protection of all openings (window, doors, garage doors and gable vents, etc.) by either installing shutter systems or using wind and impact-resistant window and/or door systems.

Mitigation is important for single family residential homes, multi-family residential homes, and mobile or manufactured homes (mobile homes). Florida has the largest number of mobile homes of any state in the nation and the highest number of mobile homes owned by the elderly, although information varies on the number and age of mobile homes in Florida.<sup>29</sup> The Shimberg Center estimates mobile homes represent 12% of the housing stock and house 10% of the state population.<sup>30</sup> The 2000 Census report estimates there are over 600,000 mobile homes in Florida, 85% of which were built before 1995.<sup>31</sup> According to another source, the 2000 Census counted almost 850,000 mobile homes in Florida, most of which were built before 1995.<sup>32</sup>

Mobile homes built before 1994 are not built in accordance with the wind standards implemented by the U.S. Housing and Urban Development agency (HUD). These wind standards were implemented due to the severe damage to mobile homes by Hurricane Andrew. HUD designates wind zones in Florida by county and requires mobile homes to be placed in a wind zone to be manufactured to standards designed for the wind zone. For example, a mobile home located in a Type III Wind Zone must be built to withstand winds of 110 miles per hour. Type III wind zones are located primarily in coastal counties along Florida's southwest and southeast coasts, south of Lake Okeechobee. HUD has designated all counties in Florida as either a Type II or Type III Wind Zone. Type II Wind Zones must contain mobile

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<sup>28</sup> The Property Insurance Market in Florida 2004: The Difference a Decade Makes; prepared by the OIR; March 2005, page 17.

<sup>29</sup> Id. at page 14.

<sup>30</sup> Id.

<sup>31</sup> Id. at page 18.

<sup>32</sup> *Third Party Analysis of Manufactured Home Retrofit Tie Downs*, report by FEMA, June 2005, at page 10.

homes able to withstand winds of up to 100 miles per hour. Prior to the implementation of wind zones by HUD in 1994, mobile homes were built to withstand winds of 70 miles per hour.<sup>33</sup>

### **Hurricane Mitigation Premium Credits**

Since 2003, insurers have been required to provide premium credits or discounts for residential property insurance for properties on which construction techniques had been installed which reduce the amount of loss in a windstorm. These construction techniques include roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protection, and window, door, and skylight strength, etc. Individual credits generally range from 3% to 25% and a fully mitigated home can qualify for total credits ranging from 20% to 42% off its wind insurance premium. Typically, policyholders are responsible for substantiating to their insurers the existence of loss mitigation features in order to qualify, often requiring some sort of certification or inspection. Insurers may allow homeowners to self-certify some features such as roof shape or number of stories, but require an engineer, building inspector, architect, or licensed building contractor to certify the more technical features such as roof deck attachment. Section 627.711, F.S., requires insurers to notify their policyholders or potential policyholders at policy issuance and renewal about the availability and range of credits or discounts for making wind mitigation improvements to their homes.

### **Hurricane Loss Mitigation Funding In Current Law**

Section 215.559, F.S., directs the Legislature to annually appropriate at least \$10 million from the FHCF, but no more than 35% of the investment income from the prior fiscal year for hurricane loss mitigation programs.<sup>34</sup> Actual annual legislative appropriations have ranged from the minimum \$10 million to \$30 million. The Hurricane Loss Mitigation Program (Mitigation Program) within the Department of Community Affairs (DCA) was created in 1999, with an annual appropriation of \$10 million from the FHCF, to fund programs for improving the wind resistance of residences and mobile homes to prevent or reduce losses or reduce the costs of rebuilding after a disaster.<sup>35</sup> Three (\$3) million from the Mitigation Program is statutorily directed to retrofitting public facilities to be used as hurricane shelters while the remaining \$7 million, is appropriated for the Residential Construction Mitigation Program (RCMP) administered by DCA and statutorily allocated as follows:

- 40% (\$2.8 million) is used to inspect and improve tie-downs for mobile homes.
- 10% (\$700,000) is directed to the Type I Center of the State University System dedicated to hurricane research, e.g., Florida International University.
- The remainder (50% or \$3.5 million) is generally directed to programs developed by the DCA with advice from an Advisory Council to help prevent or reduce losses to residences and mobile homes or to reduce the cost of rebuilding after a disaster.

One of the programs funded by the \$3.5 million allocation directs grants targeting homes in the Governor's designated Front Porch communities to provide hazard mitigation upgrades to low-to-moderate income homes. Chapter 2005-264, L.O.F. passed by the Legislature last year, required DCA by the 2006-2007 fiscal year to establish a low-interest loan program for homeowners and mobile homeowners to use to retrofit their homes with hurricane mitigation measures. Prior to the enactment of this law, DCA did not have any low-interest loan programs.

### **Governor's Fiscal Year 2006-2007 Budget**

The Governor's Fiscal Year 2006-2007 recommended budget for Florida contains various funding proposals for hurricane mitigation. These proposals are in addition to the \$10 million required to be spent on mitigation pursuant to s. 215.559, F.S. The recommended budget includes \$50 million to retrofit older homes to help them better withstand hurricanes. Many of the other hurricane mitigation

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<sup>33</sup> See *Third Party Analysis of Manufactured Home Retrofit Tie Downs*, report by FEMA, June 2005, at pages 10-13; *Mobile Home Damage Assessment From Hurricane Wilma 2005*, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 29, 2005, at page 1.

<sup>34</sup> s. 215.555(7), F.S. (2005).

<sup>35</sup> s. 215.559, F.S. (2005).



funding proposals cover funding for hurricane shelters, evacuation, county emergency operations centers, rebuilding for homes damaged by the 2004 and 2005 hurricanes, and affordable housing.

### **Mitigation Endowment Proposed By the Bill**

The bill creates the Florida Hurricane Damage Prevention Endowment funded by a \$100 million appropriation from the General Revenue Fund. The endowment provides no-interest loans for the purpose of hurricane damage mitigation and prevention. It distributes the loans on the following priorities:

- 1) single-family owner-occupied dwellings located in the areas designated as high-risk areas for purposes of Citizens Property Insurance Corporation coverage;
- 2) single-family owner-occupied dwellings covered by Citizens Property Insurance Corporation, wherever located;
- 3) single-family owner-occupied dwellings that are more than 40 years old;
- 4) all other single-family owner-occupied dwellings; and
- 5) all other residential properties.

Homeowners participating in the loan program must obtain a hurricane mitigation inspection as a condition of participating in the program. The cost of the inspection can be included in the loan amount. The no-interest loans provided under the program are only available to mitigate homestead property with an insured value of \$500,000 or less.

The loan program is to be administered through lending institutions with the Department of Financial Services (DFS) issuing requests for proposals for lending institutions that want to participate in it. The state will pay the participating financial institutions enough money to cover the interest on the loans the institutions give to homeowners participating in the program.

The endowment amount (\$100 million) will be invested by the State Board of Administration (SBA) in investments that ensure the \$100 million is preserved and will not decrease. Accordingly, the monies used to pay the interest on the loans will be generated through investment income of the \$100 million (expected to be \$5 million). It is anticipated financial institutions will be able to loan approximately \$55 million under the program.

Eighty percent of the interest earned on the \$100 million investment (\$4 million) must be used to pay interest on the no-interest loans to homeowners. The remaining 20% (\$1 million) is used for matching fund grants to local governments and nonprofits for hurricane mitigation projects.

An advisory council is created to advise the DFS regarding the endowment program.

### **Florida Comprehensive Hurricane Damage Mitigation Program**

The bill also establishes the Florida Comprehensive Hurricane Damage Mitigation Program (program). The program must be administered by an individual with prior private sector executive experience in construction, insurance, or business. The program encompasses four aspects – hurricane mitigation inspections, hurricane mitigation grants, hurricane mitigation loans, and education and consumer awareness.

Regarding inspections, the bill requires the program to offer free hurricane mitigation inspections to single family, site-built, owner occupied property. The inspections are delivered via a request for proposal process established by the DFS. The bill provides minimum requirements for the inspection report to contain.

Regarding grants for hurricane mitigation measures, the program is required to create a process for contractors to receive reimbursement from the state for hurricane mitigation measures installed in single family, site-built, owner-occupied residential property. Matching grants are available to local governments and nonprofits for hurricane mitigation measures implemented to similar property.

Loans to homeowners for installation of hurricane mitigation measures are provided by the Florida Hurricane Damage Prevention Endowment under s. 215.558, F.S.

Regarding public education and consumer awareness, the program must implement multi-media techniques to provide Floridians with information about mitigation. It must also implement a referral program for homeowners to access the program's resources.

The bill appropriates \$400 million from the General Revenue Fund to the DFS for the program in nonrecurring funds.

### **Citizens Property Insurance Corporation**

#### **Background**

In 2002, the Florida Legislature created Citizens Property Insurance Corporation (Citizens) which combined the then existing Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens is the state's "insurer of last resort" and a property is eligible for coverage with Citizens only if there is no other offer from an authorized insurer.

Citizens operates under the direction of an 8-member Board of Governors, appointed by the Governor, Chief Financial Officer, the Senate President, and the Speaker of the House of Representatives for 3-year terms. The Chief Financial Officer also appoints a technical advisory board to provide information and advice to the Board of Governors.

Citizens offers three types of property and casualty insurance in three separate accounts:

- 1) Personal Lines Account (PLA) which covers homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies;
- 2) Commercial Lines Account (CLA) covering condominium associations, apartment buildings and homeowners associations; and
- 3) High-Risk Account (HRA) which covers personal lines windstorm-only policies, commercial residential wind-only policies and commercial non-residential wind-only policies.

As of February 2006, Citizens provided coverage to 815,482 policyholders, making Citizens the second largest insurer in Florida.<sup>36</sup> The numbers of policyholders in the three accounts are: PLA – 445,513; CLA -- 3,167, and HRA – 366,802.<sup>37</sup> Currently, Citizens is averaging 30,000 – 40,000 new applications for coverage per month. At this rate, it is soon likely to become the largest insurer in Florida.

The High-Risk Account provides windstorm only coverage. Citizens provides coverage in specially designated areas which have been determined to be particularly vulnerable to severe hurricane damage. In these "wind only" zones, private insurers may offer other peril insurance, but are not required to provide windstorm coverage. For the HRA policies in effect on January 31, 2006, Citizens reports approximately \$756 million generated in premiums, representing an exposure of approximately \$134 billion.<sup>38</sup> The premiums generated by the HRA policies account for approximately 55% of all premiums generated and represents 64% of Citizens' total exposure.

In 2004 and 2005, Citizens policyholders were impacted by all eight hurricanes hitting Florida. Citizens reports 124,674 claims have been filed for the four 2004 hurricanes and 168,377 claims for the 2005 hurricanes.<sup>39</sup> As of the end of February, 2006, Citizens has paid over \$2.9 billion in claims for the 2004

<sup>36</sup> Presentation by a representative of Citizens at the Senate Banking and Insurance meeting on April 7, 2006.

<sup>37</sup> Presentation by a representative of Citizens at the Senate Banking and Insurance meeting on April 7, 2006

<sup>38</sup> Id.

<sup>39</sup> Presentation by a representative of Citizens at the Senate Banking and Insurance meeting on April 7, 2006.

hurricane season and an additional \$2.6 billion in claims for the 2005 hurricane season.<sup>40</sup> Hurricane Wilma was especially devastating for Citizens. This hurricane accounted for over 145,000 claims. As of February 28, 2006, Citizens has paid over \$1 billion in losses for Hurricane Wilma and estimates its total losses will be over \$2 billion.<sup>41</sup>

The bill increases Citizens accounts offering property and casualty insurance from three to four. It also limits the three existing accounts (PLA, CLA, and HRA) to offering insurance only to homestead property. Homestead property includes property which currently has a homestead exemption, which qualifies for a homestead exemption but does not have one (if the policy holder obtains the exemption in a year), commercial residential property, property covered by tenant's insurance, and property covered by insurance for owner-occupied mobile homes. Commercial nonresidential property on which Citizens writes wind only and property on which no homestead exemption is claimed must get insurance coverage in Citizens' nonhomestead account. Policyholders in the nonhomestead account must certify, by affidavit at the time the policy is issued and at renewal, the property insured has been rejected for coverage by at best three authorized and three surplus lines carrier. Authorized insurers are allowed to write insurance on Citizens' nonhomestead property on an individual rate basis. In most cases, this will allow the insurer and the homeowner to negotiate a rate for homeowner's insurance. The OIR, however, is still able to review the rate to determine if it is inadequate or unfairly discriminatory.

The bill also requires Citizens to purchase reinsurance on the nonhomestead account to cover a 250-year probable maximum loss event. Under current law, Citizens must use its "best efforts" to purchase reinsurance for a 100-year probable maximum loss. Citizens purchased reinsurance for the 2005 hurricane season for its' HRA and PLA accounts. For the HRA, for \$20 million, it purchased \$282 million in season-long coverage after \$775 million in losses; for the PLA, for almost \$29 million it purchased \$175 million in season-long coverage after \$225 million in losses.<sup>42</sup> Citizens' expects to collect recoveries from private reinsurance on the HRA (\$35 million recovery) and PLA (\$41 million recovery). These recoveries will be offset against the amount of 2005 deficits in each account.

The bill requires properties in the nonhomestead account insured at \$250,000 or more to have at least 5% hurricane deductible.

Under current law, private market insurers can only adjust Citizens' wind-only policies on a voluntary basis if the insurer writes the other perils policy for the Citizens policyholder. The bill requires Citizens to report to the Legislature regarding the feasibility of requiring private insurers to issue and service Citizens' wind-only policies if the insurer writes the other peril portion of the policy.

### **Depopulation and Take-Out Bonuses**

Since 1995, Florida law has expressed the Legislature's intent to provide a variety of financial incentives to encourage the replacement of the highest possible number of policies written in the state's residual market with policies written by admitted insurers at approved rates.<sup>43</sup> There is specific authority for Citizens, as there was for the RPCJUA, to pay a "take-out bonus" to insurers of up to \$100 for each policy removed from Citizens, under certain conditions. However, Citizens, like the RPCJUA before it, has implemented greater bonuses under conditions approved by its board and the OIR, based on a broader grant of authority to adopt programs and incentives for the reduction of both new and renewal writings found in s. 627.351(6)(g)3., F.S.

Citizens adopted a new depopulation program in December 2005. This program has non-bonus and bonus components in it. Only policies taken out with wind coverage are eligible for a bonus. Take-out companies must assume a minimum number of policies or a minimum total insured value of the take-

<sup>40</sup> Presentation by a representative of Citizens at the Senate Banking and Insurance meeting on April 7, 2006.

<sup>41</sup> Personal communication from a representative at Citizens on file with the Insurance Committee.

<sup>42</sup> Citizens Property Insurance Corporation Board of Governor's Report to the Florida Legislature dated February 1, 2006, page 12.

<sup>43</sup> See s. 627.351(1), F.S. (2005); s. 10, ch. 95-276, L.O.F.

out policies under either the bonus or non-bonus component. Policies must be taken out for three or five years in order to be eligible for a bonus. Base bonus amounts range from 5% to 12.5% for dwelling policies; however, some policies are not eligible for bonuses. Base bonuses for condo unit/tenant contents and mobile home policies have different ranges. Take-out companies can receive an additional bonus amount for assuming a greater number of policies or for taking a policy out for 5 years. The additional bonus amounts range from 0% to 10%, depending on the number of bonus eligible policies or the total insured value of policies taken out.

Citizens reports that in 2004, four insurance companies removed more than 158,416 policies from Citizens, including 145,959 in the PLA and 12,457 in the High Risk Account. In 2005, 293,684 policies were removed from Citizens (75,556 from the HRA and 218,128 from the PLA).<sup>44</sup> According to Citizens, take-out companies predict 150,000 – 300,000 policies will be taken out of Citizens in 2006.<sup>45</sup> Additionally, Citizens believes the take-out program has had substantial impact in keeping PLA policies from growing more than they have and in stabilizing the number of HRA policies.<sup>46</sup>

It has been questioned whether the take-out bonuses provide a cost-effective method for reducing Citizens' potential liability. On the one hand, payment of cash bonuses to insurers reduces Citizens' surplus to pay claims and may be a windfall to an insurer willing to take out a policy at its approved rate without the bonus. On the other hand, a take-out bonus may be viewed as a form of "reinsurance" that transfers 100% of liability for a policy for the 3-year period that a take-out insurer must continue to renew the policy, and reduces potential assessments on the entire market.

In its operational audit of Citizens, the Auditor General found the bonus amount paid or escrowed for each policy taken out of Citizens averaged \$148, although Citizens had several takeout programs paying take-out bonuses of \$300 per policy. The Auditor General also recommended Citizens seek legislative clarification of its authority to pay bonuses in excess of \$100 per policy as provided in s. 627.3511(2), F.S., In response to the Auditor General's recommendation, the Board of Citizens requested the Legislature to clarify their authority to develop takeout bonus programs providing more than \$100 per policy.<sup>47</sup>

The bill provides legislative clarification regarding the amount per policy Citizens can pay as a takeout bonus. The bill limits the bonus amount to \$100 per policy in accordance with s. 627.3511(2), F.S., The bill also provides immunity to insurance agents and their employees relating to coverage differences and insolvencies of private insurers participating in Citizens' depopulation.

## **Rates**

In order to assure that Citizens rates are not competitive with the voluntary market, the current law requires that Citizens rates for its PLA be actuarially sound and that its average rates for each county must be no lower than the average rates charged by the insurer that had the highest average rate in that county among the 20 insurers (5 insurers for mobile home coverage) with the greatest direct written premium in the state for that line of business.<sup>48</sup>

For its HRA (wind-only policies in coastal areas), the law more generally requires that Citizens rates be actuarially sound and not be competitive with approved rates charged by authorized insurers. However, the law further requires Citizens and the OIR to jointly develop a wind-only ratemaking methodology to meet this purpose, for rates effective on or after July 1, 2004.<sup>49</sup> A wind-only rate methodology was

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<sup>44</sup> Personal communication with a representative of Citizens on file with the Insurance Committee.

<sup>45</sup> Id. at page 3.

<sup>46</sup> Minutes from the Task Force on Long-Term Solutions for Florida's Hurricane Insurance Market meeting December 14, 2005; The Task Force on Long Term Solutions to Florida's Hurricane Insurance Market report adopted March 6, 2006, pages 41-42.

<sup>47</sup> Id. at page 13.

<sup>48</sup> s. 627.351(6)(d)2., F.S. (2005).

<sup>49</sup> s. 627.351(6)(d)3., F.S. (2005).

developed that uses a variation of the "Top 20" approach mandated for personal residential multi-peril policies.

In 2005, Citizens made two rate filings, each seeking an increase in rates. One filing was based on the Top 20 approach; the other filing was based on actuarially soundness. Neither filing has been approved by the OIR yet. The Citizens' Top 20 rate filing (filed with OIR on November 29, 2005) results in a statewide average premium rate increase of 16% for Citizens' HRA policyholders and a 15% increase for its PLA policyholders.<sup>50</sup>

The Citizens' actuarial rate analysis filing results in a statewide average premium rate increase of 17% for the PLA and 45% for the HRA. The combination of the Top 20 rate filing and the actuarial rate filing results in a statewide average premium increase of 35.5% for PLA policyholders and 68.4% for HRA policyholders.<sup>51</sup>

The bill requires Citizens to charge a rate in its three homestead accounts to cover a 100-year probable maximum loss event using premiums, FHCF reinsurance, and investment income only. Citizens is prohibited from using income from assessments, bonding, state revenues, or long-term debt in its rate calculation.

For the nonhomestead account, Citizens must charge a rate to cover a 250-year probable maximum loss event using only the same assets described above. In addition, authorized insurers willing to provide insurance to property in the nonhomestead account can do so on a consent to rate basis without the policies insured counting against their maximum percentage of consent to rate policies.

The bill also requires Citizens to include a residual market risk load in their rates. This factor will allow Citizens to develop a capital base similar to that required of insurers in the voluntary market and should, over time, reduce the need for and frequency of assessments. The Task Force on Long-Term Solutions for Florida's Hurricane Insurance Market adopted this recommendation in its report of March 6, 2006.

The bill provides for automatic approval of an insurer's rate request for the wind portion of a policy in Citizen's HRA if the rate requested is lower than Citizens' approved rate for a similar risk. However the OIR retains the authority to disapprove such a rate request if it finds the request is inadequate or unfairly discriminatory.

### **Deficits**

Generally, if Citizens does not have adequate funds to pay claims in any of its three accounts (i.e. a deficit), it may levy regular assessments for each such account against property insurers, including surplus lines insurers, up to 10% of each insurer's net written premium from the prior year for subject lines of business.<sup>52</sup> The entire regular assessment is levied against property insurers, who may recoup such amounts from their policyholders in subsequent rate filings. Currently, Citizens' assessment base has about \$8.3 billion in premium, so a one-time regular assessment would generate about \$830 million.<sup>53</sup>

An insurer must pay the company's regular assessment within 30 days of receipt of notification from Citizens. If the regular assessment is not sufficient to cover the deficit, Citizens may issue revenue bonds funded by multi-year emergency assessments collected by insurers as premium surcharges on

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<sup>50</sup> Meeting minutes from Citizens' Board of Governors meeting on December 15, 2005.

<sup>51</sup> Id.

<sup>52</sup> Subject lines of business that are subject to Citizens' deficit assessment include insurance for: fire, industrial fire, allied lines, farm owners multiperil, homeowners multiperil, commercial multiperil, and mobile homes, and includes liability coverage on all such insurance except for inland marine and certain vehicle insurance other than the insurance on mobile homes used as permanent dwellings.

<sup>53</sup> Personal communication with representatives from Citizens on November 29, 2005.

all property insurance policyholders in the state, generally limited to 10% of premium, or 10% of the deficit, whichever is greater.

However, “limited apportionment companies” (and their policyholders) are exempt from a substantial portion of a regular assessment. These are insurers with a surplus of \$25 million or less, and writing 25 percent or more of their total countrywide property insurance premiums in Florida. These insurers are exempt from regular assessments for any amount of the deficit in excess of \$50 million. However, if a deficit is great enough to require multi-year emergency assessments in order to fund bonds, the policyholders of limited apportionment companies are subject to emergency assessments at the same amount as other property insurance policyholders.

After imposing a regular assessment on insurers, Citizens is required to impose a “market equalization surcharge” on its own policyholders equal to the same percentage or premium assessment that is imposed on property insurers. This is intended to keep the Citizens’ rates from being non-competitive, but also acts to increase revenue to Citizens above the amount of the deficit, which is fully funded by the regular assessment (if the deficit is equal to or less than 10% of premium). In other words, Citizens collects money from Florida homeowners in an amount sufficient to cover its deficit and then collects an additional amount from its policyholders.

Prior to the 2004 hurricane season, Citizens had a surplus of about \$1.1 billion for its High Risk Account and \$700 million for the PLA/CLA combined. Citizens’ claims losses related to the 2004 hurricane season amounted to more than \$2.4 billion, depleting its entire surplus in the High Risk Account. Thus, Citizens incurred a \$516 million deficit in the HRA. The other two accounts (PLA and CLA) did not incur deficits.

The \$516 million deficit translates into statewide average 6.8% assessment on all non-Citizens insured homeowners in Florida. However, Citizens policyholders will also pay a 6.8% assessment, a “market equalization surcharge,” upon renewal of their policy.

Historically, joint underwriting authorities have used an assessment mechanism to fund deficits.<sup>54</sup> Florida’s assessment mechanism for the property and casualty joint underwriting authority has been in place since the mid 1970s. The following chart outlines the assessments made by the property and casualty joint underwriting authority since 1970:

Year	Account	Principal Storm(s)	Assessment Amount
1975	HRA	Hurricane Eloise	\$ 5.0 million
1985	HRA	Hurricane Elena	\$ 3.2 million
1992	HRA	Hurricane Andrew	\$ 16.2 million
1993	HRA	Winter Storm	\$ 3.2 million
1994	PLA	Non-hurricane	\$ 17.7 million
1995	HRA	Hurricane Opal	\$ 84 million
1995	PLA	Hurricane Opal	\$ 22.8 million
1998	HRA	Hurricane George and Tropical Storm Mitch	\$100 million

Source: Citizens Property Insurance Corporation (August 25, 2005)

Although all of the assessments outlined above were levied before the creation of Citizens, they were levied by the predecessor “insurer of last resort” for property and casualty insurance (i.e. the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) or the Florida Windstorm Underwriting Association (FWUA)).

Due to the 2004 losses and deficit, Citizens started the 2005 hurricane season with no surplus in the HRA. Because this account sustained losses again in 2005 as a result of the 2005 hurricanes, as well

<sup>54</sup> See s. 617.3512, F.S. (2005); s. 627.311(5)(d), F.S. (2005) (relating to the Florida Workers’ Compensation Joint Underwriting Association); s. 627.351(4)(e), F.S. (2005) (relating to the Medical Malpractice Joint Underwriting Association)

as worsening loss development for the 2004 hurricanes (which are booked to the 2005 financial statements) Citizens incurred a deficit for the second year in a row. Although Citizens does not yet have its formal, certified amount of its 2005 deficit, it estimates the deficit in the High Risk Account will be \$1.7 billion.<sup>55</sup> This amount includes \$590 million in worsening loss development for claims from 2004. Citizens started the 2005 hurricane season with an estimated \$162 million surplus in the PLA and \$25.7 million surplus in the CLA.<sup>56</sup> For 2005, Citizens estimates a deficit of \$82 million in the PLA and a deficit of \$4 million in the CLA.<sup>57</sup> These deficits are expected to result in a regular assessment of about 11 percent of premium (the full 10 percent for the HRA and about 1 percent for the PLA/CLA), plus an 8 percent emergency assessment.<sup>58</sup> The 11 percent regular assessment would be billed at one time and, presumably, passed on to policyholders in rate filings by insurers. The 8 percent emergency assessment could be spread out over a period of years, depending on the terms of the financing approved by the board.

The bill requires Citizens to collect deficits in the three homestead accounts and the one nonhomestead account differently. The bill requires Citizens to divide any deficit among all property insurers, including their policyholders in the three homestead accounts. This will ensure Citizens does not collect more for their deficit than the deficit amount (i.e. cannot collect monies through deficit assessments to reserve as surplus). In order to charge Citizens' homestead policyholders their share of the deficit, Citizens will levy a surcharge (a "Citizens policyholder surcharge") in the same amount of the assessment passed on by the insurers to their homeowners.

If there is a deficit in the nonhomestead account, its policyholders must be assessed an amount sufficient to defray the deficit. The deficit cannot be paid by policyholders in the three Citizens homestead accounts or property insurers in the private market. In other words, a Citizens' deficit created by losses to nonhomestead property will not be passed on to Florida homeowners or Citizens' homestead property owners. Furthermore, any Citizens' policyholders in the nonhomestead account that does not pay its assessment cannot obtain insurance from surplus lines or authorized insurers.

The bill appropriates \$920 million to fund a portion of Citizens' 2005 deficit which would have resulted in levying regular assessments on homeowners. The bill also requires any emergency assessment to be amortized over a 10-year period.

## **Changes to Coverage Limits of Citizens**

### **\$1 Million Coverage Prohibition**

Although not specified by statute, Citizens currently has a maximum policy limit of \$1 million for homeowner policies issued in its PLA. This prohibition has been in effect for at least ten years. This account also limits coverage to \$100,000 for mobile homes, \$200,000 for condominium units, and \$100,00 for tenants policies. However, there is no corresponding upper limit for residential (wind-only) policies issued the HRA. In February, Citizens reported that it had 6,431 residential policies in force that were insured for values greater than \$1 million, with a total insured value of \$16.7 billion with a total premium of \$64.3 million. Additionally, a representative of Citizens reported that as of December 12, 2005, it had 5,280 HRA residential policies with dwelling coverage in excess of \$1 million and that the total inforce premium was \$64,238,090, resulting in an average premium of \$12,166.

The bill prohibits homes with insured values of \$1 million or more and condominium unit owner policies with combined dwelling and contents coverage of \$1 million or more from obtaining coverage in Citizens. Citizens estimates restricting eligibility for coverage to homes with insured values of \$1 million or more will reduce their probable maximum loss (PML) in the HRA by \$809 million which

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<sup>55</sup> Personal communication from a representative of Citizens on file with the Insurance Committee.

<sup>56</sup> Personal communication from a representative of Citizens on file with the Insurance Committee.

<sup>57</sup> Personal communication from a representative of Citizens on file with the Insurance Committee.

<sup>58</sup> Personal communication from a representative of Citizens on file with the Insurance Committee; presentation by a representative of Citizens at the Senate Banking and Insurance meeting on April 7, 2006.

equates to 12.5%. Additionally, this restriction will reduce Citizens' residential exposure by \$16.7 billion or 14%.<sup>59</sup> The largest single residential insured property Citizens covers in the HRA has a total insured value of \$25.5 million.

Citizens had also reported in February of this year that the 100-year PML for the HRA was \$7.8 billion as of December 31, 2005. However, Citizens reported new PML estimates in March that shows the 100-year PML of the HRA is now \$10.3 billion.

One property insurance option for homeowners with properties insured for \$1 million or more is to obtain property coverage from the surplus lines insurers. The percentage of homeowners' insurance written by surplus lines insurers from 2002 – 2004 was 4% for each year. In other words, the admitted insurers wrote 96% of the homeowners' insurance written in Florida for those years. In 2004, 179,180 homeowners' policies were written in the surplus lines market.<sup>60</sup> Of these, 153,117 or 85% provided wind coverage and 26,068 excluded wind coverage. These included 5,690 policies with coverage limits in excess of \$1 million, of which 3,980 provided wind coverage and 1,710 excluded wind coverage. Prior to the 2005 hurricane season, the Florida Surplus Lines Service Office reported that there is capacity and interest in the surplus lines market in writing high-value dwellings; however, the surplus lines market conditions can change rapidly. In addition, windstorm deductibles for surplus lines' policies are typically 5% or 10% and sinkhole coverage is typically excluded.

As of December 14, 2005, the surplus lines insurers issued 134,000 homeowners' policies in Florida in 2005, down from 179,180 policies in 2004.

In conjunction with the prohibition against Citizens' covering properties insured at \$1 million or more, the bill allows authorized insurers in the private voluntary market to insure these properties on an individual rate basis; however, the OIR can still review such rate to determine if the rate is inadequate or unfairly discriminatory. This is another property insurance option for homeowners with properties insured for \$1 million or more. Having property insured in the admitted market, rather than the surplus lines market, offers policyholders the protection of the guaranty association to pay any claims (up to the association's limit) in the event the insurer becomes insolvent. This protection is not afforded to policyholders obtaining insurance in the surplus lines market.

Insurance agents are given access to claims and underwriting information kept by Citizens for policies ineligible for Citizens due to the \$1 million restriction, in order to try to find coverage for the properties in the private market. The bill provides a procedure for agents to obtain such information and a procedure for policyholders to request that Citizens keep their information confidential.

#### Issuance of Restrictive Coverage Policies

Section 627.351(6)(c)1., F.S., requires Citizens to adopt five different policy forms – standard personal lines policies with comprehensive multi-peril coverage, basic personal lines policies meeting the requirements of the secondary mortgage market, commercial lines policies with full coverage, personal and commercial residential wind-only policies, and commercial nonresidential wind-only policies.

The bill allows Citizens to adopt variations of the five policy forms that offer more restrictive coverages than the five policy forms listed above.

#### **Ethical Considerations**

Part III of ch. 112, establishes the code of ethics for public officers and employees, which mandates that employees comply with financial disclosure and reporting requirements. Each year, public officers and specified employees are required to submit a financial disclosure to the Commission on Ethics. Noncompliance with these provisions may result in civil penalties and forfeiture of public retirement benefits. [s. 112.317, F.S.]

<sup>59</sup> Personal communication received from Citizens on February 13, 2006, on file with the Insurance Committee.

<sup>60</sup> Final Report and Recommendations of the Joint Select Committee on Hurricane Insurance, February 25, 2005, page 14.



Chapter 2005-111, L.O.F., directed the Auditor General to conduct an audit of Citizens. On December 7, 2005, the Auditor General released an operational audit (report number 2006-096) of Citizens, which included findings in the areas of administration, policy eligibility determination and depopulation, customer service, claims handling, actuarial soundness of rates, and financing options. The report included the following recommendations related to the administration of Citizens:

- No documentation was available to show that Citizens had conducted an enterprise-wide evaluation of the effectiveness of operational and financial controls.
- The statutes governing Citizens do not require the OIR to conduct background investigations of Citizens' management and officers, which are required for voluntary insurers.
- Additional steps should be taken to strengthen the standards of conduct.
- Citizens had not implemented a comprehensive written procurement of policies and procedures.

Citizens operates subject to the supervision and oversight of the Board of Governors and pursuant to a plan of operation approved by order of the OIR. Because Citizens is not considered a state agency, state law governing ethics for state employees is not applicable to Citizens' employees or board of directors.

On October 20, 2005, the Citizens' Board of Directors adopted proposed amendments to the Citizens' plan of operation relating to ethical standards and disclosure requirements for officers and board members of Citizens. Upon adoption by the board, the proposed amendments were sent to the OIR for approval and inclusion in the Citizens' plan of operation. The OIR approved the amendments on November 30, 2005. The standards and requirements adopted are similar to those governing state employees. The standards and requirements:

- Prohibit the Executive Director, Senior Managers of Citizens or any Board member from personally representing another person or entity before the Board or Corporation for a period of two years following their departure;
- Subject the Executive Director and Senior Managers of Citizens to the background investigation provisions prescribed by the Office of Insurance Regulation for officers of insurers;
- Require the Executive Director and Senior Managers of Citizens to file financial disclosure information in a format substantially similar to that required of state employees under Section 112.3144, F.S.;
- Require vendors to disclose any relationship, financial or otherwise, with employees or Board members; and
- Require the Executive Director to immediately report to the Chairman of the Board any breach of ethics policy regarding an employee or Board member and to report any such breach which may constitute criminal activity to the Division of Insurance Fraud within 48 hours of discovery.

The bill requires all members of the Citizens' Board and any employee with managerial, policy making, or professional duties to comply with the Code of Ethics applicable to state government employees.

### **Wind-Only Coverage Zones**

Citizens provides coverage in specially designated areas which have been determined to be particularly vulnerable to severe hurricane damage. In these "wind-only" zones, private insurers may offer other peril coverage, but are not required to provide windstorm coverage.

Beginning February 1, 2007, if Citizens' 100 year probable maximum loss (PML) in its wind-only zones is not reduced by 25% from what it was in February 2001, the wind-only zones must reduce by an amount that allows Citizens to reduce its PML by 25%.<sup>61</sup> It does not appear Citizens will be able to reduce its 100 year PML by 25% by February 1, 2007, in accordance with this statute. One reason is because Citizens has grown, in part, due to the reluctance of private insurers to expand their writings in Florida because of the significant losses sustained in the 2004 and 2005 hurricane seasons.

<sup>61</sup> s. 627.351(6)(o), F.S. (2005).

The bill extends the time period for Citizens to reduce its 100 year PML in the wind-only zones from February 1, 2007, to February 1, 2013. Therefore, insurers writing the other peril/non-wind coverage will not face the choice of either dropping that coverage or writing the windstorm coverage for policies.

A similar provision relating to Citizens' reduction of its 100 year PML by February 1, 2012, by 50% or risk having the area eligible in the HRA to reduce to a smaller area is affected by the bill. This provision is extended to February 1, 2018.

The bill creates the High Risk Eligibility Panel to study Citizens wind-only zones and to recommend to the Legislature each year the areas that should be eligible for the wind-only zones. It requires the panel to report by November 30, 2006, on eligibility of specified areas for the wind-only zones.

### **Hurricane Loss Models**

In 1995, the Legislature established the Florida Commission (Commission) on Hurricane Loss Projection Methodology to serve as an independent body within the State Board of Administration.<sup>62</sup> The Commission's role is to adopt findings relating to the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane losses. The membership of the Commission is designed to equip it with expertise in fulfilling its mission. The members include experts in insurance finance, statistics, computer system design, and meteorology who are full-time faculty members in the State University System, appointed by the CFO, an actuary member from the FHCF Advisory Council, an actuary employed with a property and casualty insurer appointed by the CFO, an actuary employed by the OIR, the Executive Director of Citizens, the senior employee responsible for FHCF operations, the Insurance Consumer Advocate, and the Director of Emergency Management of DCA. The Commission sets standards for loss projection methodology and examines the methods employed in proprietary hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission standards. The Commission uses a staff of five experts made up of a meteorologist, an engineer, an actuary, a statistician, and a computer scientist known as the "Professional Team" to conduct on-site reviews of proprietary models and to report back to the Commission as to their conclusions.

There are currently four private hurricane loss models that have been determined by the Commission to meet its standards and found acceptable. The law provides that an insurer may use in its rate filing hurricane loss models found by the commission to be accurate or reliable and that such findings are admissible and relevant in consideration of the rate filing by OIR or on any arbitration or administrative or judicial review.

The bill limits the OIR and the Insurance Consumer Advocate from questioning specified aspects about the hurricane models an insurer uses to justify its rate filing if the Commission has reviewed the hurricane model used and found it to be accurate or reliable. It also allows the insurer to use a hurricane model to justify its rate filing only if the OIR and Insurance Consumer Advocate are given a reasonable opportunity to review all the basic assumptions and factors used in developing the model results. Under current law, the OIR and Insurance Consumer Advocate must have access to, rather than a reasonable opportunity to review, the assumptions and factors.

### **Public Hurricane Loss Model**

In 2000, the state authorized and initially funded the development of a public hurricane loss projection model.<sup>63</sup> The model is required to be designed in accordance with the standards set by the Florida Commission on Hurricane Loss Projection Methodology (Commission). The Department of Insurance (the predecessor to the DFS) contracted with the International Hurricane Research Center at Florida

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<sup>62</sup> s. 627.0628, F.S.

<sup>63</sup> Chapter 2000-166, L.O.F., 2000-01 General Appropriations Act, Specific Appropriation 2226, page 331.

International University for the development of the public hurricane model. The model has been developed, has been tested, and has been released for use. It has not, however, been reviewed by the Commission. Thus, it has not been found by the Commission to be accurate and reliable.

The law provides that an insurer may use in its rate filing hurricane loss models found by the commission to be accurate or reliable and that such findings are admissible and relevant in consideration of the rate filing by OIR or on any arbitration or administrative or judicial review. However, legislative changes in 2005 provided that the findings are admissible and relevant only if OIR and the consumer advocate appointed by the Department of Financial Services have access to all of the assumptions and factors that were used in developing the model and are not precluded from disclosing such information in a rate proceeding. A separate public records bill was also enacted to provide a public records exemption for a trade secret, as defined in s. 812.081, F.S., that is used in designing and constructing a hurricane loss model, that is provided by a private company to the Florida Commission on Hurricane Loss Projection Methodology (Commission), OIR, or the consumer advocate.

The bill restricts OIR from using the public hurricane model in rate filings until the model is found by the Commission to be accurate or reliable. Current law (s. 627.0628(3)(c), F.S.) restricts an insurer from using a private hurricane loss model in its rate filing unless the Commission finds the model accurate and reliable.

### **Rate Modernization**

#### **Background**

Florida is considered by some as having a restrictive system of rate regulation for property and casualty insurance (including homeowners' insurance, liability insurance, and motor vehicle insurance). In general, with respect to file-and-use submissions, insurers are not able to implement rate changes until their rate filing is approved by the regulator (formerly the Department of Insurance, currently the OIR of the Financial Services Commission).

While the option known as "use and file," under which an insurer may implement a rate change and then file it with the regulator, is available under relevant statutes, the option does not reduce the insurer's regulatory burden. Under use and file, the insurer is required to refund to policyholders any portion of a rate increase that is subsequently disapproved by the regulator. Under Florida law, the insurance company has the burden of proving that its proposed rate is not excessive, inadequate, or unfairly discriminatory.

More specifically, Florida's insurance laws require insurers (including homeowners' insurance, liability insurance, and motor vehicle insurance) to file property and casualty insurance rates for approval with the OIR either 90 days before the proposed effective date, or 30 days after the rate filing is implemented. Under the latter option, known as "use and file," the OIR may order the insurer to refund that portion of the rate determined to be excessive.

If the OIR disapproves a rate filing, in most cases, a property and casualty insurer may either request an administrative hearing under the Administrative Procedures Act (APA) (Chapter 120, F.S.), or seek binding arbitration.

#### **Rating Territories**

Property and casualty insurers establish rating territories for which a territorial rating factor will apply to increase, decrease, or leave unchanged, the base rate charged by the insurer. The insurer must demonstrate to the OIR that the application of the territorial rating factors will not result in a rate that is unfairly discriminatory, so that the factor bears a reasonable relationship to the expected loss and expense experience amount that is associated with various risks within that territory. Each insurer is permitted to establish its own territories, based on these standards. Generally, OIR does not require an insurer to justify its territorial rating factors in each rate filing, but will periodically require an insurer to do so.

## Flex Rating

Flex rating allows an insurer to vary their rates up or down from a rate approved by the regulator without obtaining approval by the regulator for the rate change; however, the rate variance must be within a specified range from the approved rate. Flex rating has been implemented in a number of states.

South Carolina implemented flex rating in 1999 for auto insurance due to a significant decline in the number of insurers writing motor vehicle insurance in the voluntary market causing an increase in auto owners insured in the residual market. Under South Carolina's flex rating, annual increases or decreases of 7% or less are deemed approved unless the regulator issues an order with findings specifying in detail why the rate filing violates statutory standards.<sup>64</sup> After South Carolina implemented flex rating for auto, insurers returned to the market and rates decreased.<sup>65</sup> South Carolina included fire, allied lines, and homeowners insurance in its 7% flex rating law on July 29, 2004.<sup>66</sup>

Louisiana allows flex rating for all lines of insurance where the rate variation is a 10% increase or decrease from the insurer's rate in effect. Pennsylvania allows flex rating for all lines except motor vehicle involving rate decreases of 10% or more and small commercial risks with rate variations of 10% or less. Texas allows flex rating for private passenger automobile insurance. New York allows it for designated commercial lines.<sup>67</sup> In 2004, Rhode Island implemented a 5% flex rating for personal lines insurance.<sup>68</sup>

The National Conference of Insurance Legislators (NCOIL) adopted a model law regarding flex rating in 2004. The model law establishes a 12% flex band on overall statewide rate increases or decreases within which an insurer can file rate changes on an expedited basis during any 12-month period. The flex rating under the model law applies to personal lines insurance. The model law allows a Commissioner of Insurance to disprove a flex rating if the Commissioner finds the rating is inadequate or unfairly discriminatory.<sup>69</sup>

The bill implements flex rating as of January 1, 2007, for use in residential property insurance. Insurers will be allowed to implement rate changes of a 5% increase or decrease average statewide or 10% increase or decrease per rating territory without obtaining the OIR's approval that the rate is excessive or unfairly discriminatory. Insurers can only increase or decrease rates by these amounts once per year. The OIR maintains authority to disapprove a rate change as inadequate or for use of unfairly discriminatory rating factors. In order for the OIR to operate under this authority, the bill requires insurers changing their rates in accordance with the flex rating allowance to submit the proposed rate change to the OIR at least 30 days prior to the effective date of the rate change. The OIR then has 30 days to determine whether to disapprove the rate change based on inadequate or use of unfairly discriminatory grounds. The rate change is automatically approved if the OIR does not make a finding on these grounds within the 30-day window.

In order to provide safeguards for rate decreases allowed by flex rating, during the OIR's 30-day review period, the bill requires the OIR to suspend a rate decrease if it finds the decrease will result in inadequate premiums or solvency problems.

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<sup>64</sup> *Rates and Regulation*, March 2006, available at <http://www.iii.org/media/hottopics/insurance/ratereg/>, (last viewed March 12, 2006).

<sup>65</sup> NCOILetter, February 2004.

<sup>66</sup> See Bulletin No. 2004-09 Issued by the South Carolina Department of Insurance on August 18, 2004, available at <https://www.doi.sc.gov/Eng/Public/bulletins/Bulletin2004-09.pdf> (last viewed March 7, 2006).

<sup>67</sup> *Rates and Regulation*, March 2006, available at <http://www.iii.org/media/hottopics/insurance/ratereg/>, viewed March 12, 2006.

<sup>68</sup> Newsbriefs, Insurance Journal, July 19, 2004, available at <http://www.insurancejournal.com/magazines/east/2004/07/19/newsbriefs>, viewed March 12, 2006.

<sup>69</sup> *Property/Casualty Flex-Rating Regulatory Improvement Model Act*, National Conference of Insurance Legislators, Adopted February 27, 2004.

The bill requires the OIR to furnish the Legislature with an annual report regarding the impact of flexible rate regulation on competition in the insurance market.

### **Surplus Lines Insurers**

Surplus lines insurance refers to a high risk category for which there is no market available through standard insurance carriers. Typical categories of this nature are homeowners' insurance in hurricane-prone regions, commercial aircraft, and some sea vessels. Additionally, there are some types of specialized risks that general lines policies cannot cover. For example, special events, such as concerts or major sports exhibitions, may not be eligible for coverage by licensed general lines insurers.

Under current law, surplus lines insurance is governed by ss. 626.913 through 626.938, F.S. When insurance coverage is not available among licensed general lines insurers, the insurers may seek coverage in the surplus lines market. The law requires the general lines agent to make a diligent effort to procure the desired coverage from authorized agents. A diligent effort is defined by law to mean seeking and being denied coverage from at least three authorized agents. Surplus lines insurers also are regulated by the state, but to a lesser degree than general lines insurers.

The Florida Surplus Lines Service Office (the office) is created by s. 626.921, F.S., as a nonprofit association overseen by a Board of Governors comprised of nine members. Seven of the nine board members must be affiliated with the surplus lines industry. The office is directed to oversee the surplus lines industry in Florida and to provide protection of the general public with respect to the placement of surplus lines policies. The office is authorized by law to collect fees from licensed surplus lines agents, based upon the premiums collected, in order to pay the administrative and other costs associated with the office.

Under current law, in general surplus lines agents may not place any coverage with any unauthorized insurer which is not an eligible surplus lines insurer.<sup>70</sup> An unauthorized insurer cannot become a surplus lines insurer unless the statutory conditions specified in s. 626.918(2), F.S., are met. One of the conditions is the insurer must have and maintain surplus of at least \$15 million.<sup>71</sup> Another condition is the insurer must have and maintain a trust fund in the U.S. of at least \$5.4 million. The purpose of the trust fund is to provide additional protection to the insurer's U.S. policyholders. The statute further provides what type of funds can be used to satisfy the surplus and trust fund requirements.

In addition to the types of funds which can be used by alien surplus lines insurers to satisfy the surplus and trust fund requirements, the bill adds the use irrevocable, unconditional, and evergreen letters of credit issued by a qualified U.S. financial institution to be used to fund the \$5.4 million trust fund which serves to protect all policyholders. The bill also defines the term "qualified U.S. financial institution" to mean U.S. banks that are members of the Federal Reserve system.

### **Law and Ordinance Coverage**

Under current law, insurers must offer coverage in homeowners policies for the additional costs necessary to meet applicable building codes (often referred to as "law and ordinance" coverage) that provides 25% and 50% of the dwelling limits. Pursuant to s. 627.7011(2), F.S., a homeowners' insurance policy automatically includes law and ordinance coverage unless the insurer obtains the policyholder's written refusal of such. However, because both 25% and 50% law and ordinance is required to be offered to the policyholder, it is unclear which percentage of coverage is automatically included in a homeowners' policy if the policyholder does not refuse law and ordinance coverage in writing.

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<sup>70</sup> s. 626.918 (1), F.S. (2005).

<sup>71</sup> s. 626.918(2)(d)1., F.S. (2005).

To clarify any uncertainty regarding which percentage of coverage is automatically included in such circumstances, the bill specifies that 25% law and ordinance coverage (rather than 50%) is the automatically included amount if the policyholder does not refuse law and ordinance coverage in writing. This clarification was recommended in the OIR's Law and Ordinance Coverage Report submitted to the Legislature in January 2006.

### **Replacement Costs Coverage**

Currently, policies that provide replacement cost coverage provide payment of the replacement costs, without depreciating the payment for the depreciated value of the property, regardless of whether the policyholder replaces the property or submits receipts for the repair or replacement of property. This provision applies to the insured dwelling and personal property covered by the insurance policy.

By removing the allowance for payment of replacement costs for personal property, the bill allows only losses sustained to insured dwellings to be paid at replacement costs (without taking into account depreciation). Thus, losses to personal property that is insured under a homeowners' policy will be paid for after depreciation of the personal property is taken into account and the property is replaced.

The bill clarifies an insurer retains the ability to determine whether damage can be repaired or replaced.

### **Electronic Payment of Claims**

Pursuant to s. 627.4035(3)(b), F.S., insurers are allowed to pay claims by electronic means (e.g. debit card) if authorized in writing by the recipient/policyholder or the recipient's representative and if any fees or costs associated with the electronic payment and charged against the recipient are disclosed in writing at the time the recipient gives written authorization for the insurer to pay the claim by electronic means. This provision is especially helpful and useful in ensuring policyholders receive prompt payment of insurance proceeds after a disaster when they are displaced from their homes and may not have access to a financial institution to cash or deposit a check. After disasters, often times, mail delivery is interrupted and payment by electronic means is the most efficient way to make certain the policyholder receives the insurance proceeds.

The bill adds language to the existing law regarding payment of claims by electronic means to allow insurers to waive the requirement that written authorization from the policyholder is required in order for the insured to pay insurance claims electronically as long as there is no fee for the electronic payment and the insurer verifies the identity of the recipient of the insurance proceeds (the policyholder). Furthermore, the new language requires the insurer to be liable for payment of the proceeds if the payment is misdirected.

In at least one emergency order issued by OIR to insurers as a result of hurricanes hitting Florida, OIR has authorized insurers to pay claims electronically with the safeguards outlined in the bill.<sup>72</sup> However, OIR has only authorized such payment for additional living expenses and personal property contents claims. The bill does not limit electronic payment to only these claims; rather, it allows electronic payment for all types of insurance claims.

### **OIR Rulemaking in Natural Disaster Situations**

In response to each hurricane during the 2004 and 2005 hurricane season, the Commissioner of the OIR issued emergency orders. The orders covered such topics as:

- Requiring state health insurance companies and HMOs to temporarily suspend their regulations regarding prescription refills to allow prescriptions to be refilled early.
- Restricting cancellation or non-renewals of homeowners' insurance policies in specified areas for a specified time or for the whole state for a specified time with certain exceptions.

<sup>72</sup> See Case No. 83836-05-EO relating to Hurricane Wilma.

- Restricting cancellation of all insurance policies for the whole state for a specified time with certain exceptions.
- Requiring all property and casualty insurers to do reporting to the OIR.
- Requiring all property and casualty insurers to file copies of contracts between public adjusters and the policyholder with the OIR and of current fee schedules with independent adjusting firms.
- Requiring the reporting to the OIR of violations of the OIR's rules or the insurance statute and unlicensed activity.
- Prohibiting insurers from instituting rate hikes without approval from the OIR.
- Requiring insurers to follow property mediation rules adopted by emergency rule by DFS.
- Requiring insurers to toll premiums due on insurance policies for a specified time.
- Establishing timelines for initial damage assessments, processing and settlement of personal lines residential property claims, and reporting of compliance or non-compliance with the timeline.
- Requiring insurers to extend personal and commercial residential insurance coverage for a specified time after the damaged dwelling is repaired and is insurable.

The OIR issued at least five emergency orders due to the 2004 hurricanes and at least six emergency orders due to the 2005 hurricanes. Many of the orders contained similar, if not exact, provisions.

When the emergency orders were issued, any party adversely affected by the order was given notice of his or her right to seek review of it at the Division of Administrative Hearings pursuant to s. 120.68, F.S., (under the Florida Administrative Procedures Act) and at the District Court of Appeal pursuant to Rule 9.110 of the Florida Rules of Appellate Procedure.

The bill requires the Financial Services Commission (the Governor and Cabinet) to adopt standard rules for insurers to abide by following a hurricane or other natural disaster. The standard rules are limited to the following areas: claims reporting, grace periods for payment of premiums and performance of other duties by policyholders, and temporary postponement of cancellation and non-renewals of insurance policies.

The bill requires the OIR to issue an order within 72 hours after a hurricane or natural disaster to specify what line of insurance the standard rules apply to, the geographic areas of the state the standard rules apply to, and the time period the standard rules are in place. The bill prohibits the Financial Services Commission or the OIR from adopting emergency rules that conflict with the standard rules.

The bill also provides the Commissioner of the Office of Insurance Regulation with power to enact emergency rules during a state of emergency.

### **Insurer Solvency**

#### **Background on Insurer Solvency Issues**

In Florida, regulation of the insurance industry is shared by the Department of Financial Services (DFS) and the OIR. The state's Chief Financial Officer (CFO) heads the DFS while the head of the OIR is the Governor and Cabinet members sitting as the Financial Services Commission. Generally, the OIR is responsible for granting a certificate of authority or license to an insurer; a domestic insurer, i.e., an insurer based in Florida, must possess a certificate of authority in order to conduct business in Florida. The regulation and licensure of insurance agents and agencies is the purview of the DFS. Staff of the DFS also provides consumer information and assistance through the Division of Consumer Services. When an insurer faces financial difficulties or insolvency, the Division of Rehabilitation and Liquidation (the Division) of the DFS intervenes to protect the affected insurer's policyholders.

Chapter 631, F.S., relates to insurer insolvency and guaranty payments and governs the receivership process for insurance companies in Florida. Federal law specifies that insurance companies cannot file

for bankruptcy. Instead, they are either "rehabilitated" or "liquidated" by the Division of the Department of Financial Services.

By law, a delinquency proceeding is initiated by the Division against any insurer believed to be insolvent or experiencing an impairment of its capital reserves or surplus. A delinquency proceeding may include liquidation, rehabilitation, reorganization, or conservancy. Staff of the Division indicates that rehabilitation and liquidation are the two most common delinquency proceedings. By law, the Division files all delinquency proceedings in the Circuit Court in Leon County.

Only one insurer became insolvent as a result of the 2004 and 2005 hurricane season.

### **Insurance Guaranty Funds: General Information**

In addition to the consumer protections afforded by the Division, Florida operates several insurance guaranty funds to ensure that policyholders are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law. A guaranty association generally is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance carrier. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums to policyholders. The term "unearned premium" refers to that portion of a premium that is paid in advance, typically for 6 months or 1 year, and which is still owed on the unexpired portion of the policy.

Florida's guaranty associations are comprised of insurer representatives. Insurers are required by law to participate in guaranty associations as a condition for transacting business in the state. Monies available through a guaranty association for claims settlement and premium refunds are paid by insurers as a percentage of their total collected premiums. The percentage of premiums payable to a guaranty association is determined by law, although nationally it typically ranges from 1-3 percent. In many cases, a guaranty association also is authorized by law to assess an additional amount if an emergency arises and the association lacks sufficient funds to pay outstanding claims and to refund unearned premiums. This means, in essence, that insurers licensed to transact insurance in a state assess or tax their respective premium income streams to pay the outstanding claims and unearned premiums of an insolvent insurer.

Most states, including Florida, have more than one insurance guaranty association. Each association is assigned by law to pay outstanding claims and unearned premium, up to limits specified by law, for specific lines of insurance. In Florida, there are four guaranty associations created in chapter 631, F.S. The Florida Life and Health Insurance Guaranty Association generally is responsible for claims settlement and premium refunds for health and life insurers who are insolvent. The Florida Health Maintenance Organization Consumer Assistance Plan offers assistance to members of an insolvent Health Maintenance Organization (HMO) and the Florida Workers' Compensation Insurance Guaranty Association is directed by law to protect policyholders of workers' compensation insurance. The fourth guaranty association is the Florida Insurance Guaranty Association (FIGA); it is responsible for most remaining lines of insurance, including residential and commercial property, automobile insurance, and liability insurance, among others.

### **The Florida Insurance Guaranty Association (FIGA)**

Provisions relating to FIGA, which was created in 1970, are contained in part II of chapter 631, F.S. The board of directors for FIGA is directed by law to be comprised of at least five, and no more than nine members; members serve on the FIGA board for a 4-year term.

The law directs FIGA to pay any eligible claim of more than \$100 and less than \$300,000, less any applicable deductible, with a few specified exceptions (s. 631.57, F.S.). Funds available to FIGA are the result of an annual assessment of up to 2% of each specified insurer's net direct written premiums for the previous year. There have been no assessment to FIGA members since 2002. Other monies that



accrue to FIGA include receivership payments from the DFS and from the agencies that liquidate the estates of insolvent insurers in other states.

The law creates three accounts under FIGA:

- auto liability account;
- auto physical damage account; and
- an account for all other included insurance lines (the all-other account).

The last FIGA assessments occurred in 2002. According to documents provided by FIGA, in December 2002, member insurers writing policies covered by the auto liability account were assessed 1.125% of their net direct premiums collected in 2001. Similarly, FIGA made an assessment for the auto physical damage account in 2002, as well, although that assessment was for .75%. There was no assessment in 2002 for the all-other account. According to FIGA, it has assessed the maximum of 2% only once in the past 11 years. The maximum assessment was levied in 1993, only for the all-other account, after more than six insurers were declared insolvent in the first several months following Hurricane Andrew. The law, at s. 631.56(2)(d), F.S., prohibits the use of any state funds by FIGA to settle claims and return unearned premiums.

The law authorizes insurers to include the cost of their annual FIGA assessment in their rate schedule. This means an insurer may recoup its assessment through increasing its policy rates, subject to OIR approval. Generally, however, a guaranty association assessment is one of many factors an insurer considers in setting its rates.

### **Local Government Revenue Bonds**

Article VII of the Florida Constitution governs finance and taxation by the state and its political subdivisions. In that article, the state and its political subdivisions, including municipalities and counties, are authorized to issue bonds. In most cases, bonds issued either by a city or a county are tax exempt; the tax-exempt status generally makes bonds issued by governmental entities an attractive investment instrument.

### **FIGA as Bond Guarantor after Hurricane Andrew**

On August 24, 1992, Hurricane Andrew devastated much of Dade County. By December 1992, six insurers were declared insolvent due to their inability to settle claims received following Hurricane Andrew. The Legislature met in special session in December 1992 to consider remedies for affected homeowners whose insurers were unable to pay valid claims.

Chapter 92-345, Laws of Florida (LOF) resulted from the December 1992 special legislative session. Under the law, the city of Homestead was authorized to issue municipal revenue bonds to fund FIGA obligations resulting from the multiple insolvencies that resulted from Hurricane Andrew claims. The revenue bonds issued by the city of Homestead did not pledge any assets or taxing authority of Homestead. Rather, the Legislature authorized FIGA to charge its members a special 2% assessment in addition to the regular assessment of up to 2%. The additional assessment served as the revenue stream pledged to retire the bonds issued by Homestead. Beginning in 1993, FIGA members were assessed the full 2% regular assessment. That same year, and for the following 3 years—through 1996—the full 2% special assessment also was collected from FIGA members. Only in 1993 did FIGA impose both 2% assessments. By 2000, FIGA had sufficient funds to defease (i.e. “pay off”) the Homestead bonds, although those funds were reserved to make the regular annual payments until the bonds expired in 2003.

### **Changes Made By the Bill**

Under the bill, FIGA is authorized to contract with a city or county, or a combination of cities, counties, or cities and counties to issue tax-exempt revenue bonds for hurricane recovery. The provisions of the bill closely follow the law enacted by the 1992 Legislature to enable FIGA to pay the hurricane-related claims of insurers who became insolvent following Hurricane Andrew. As in 1993, FIGA will guarantee the tax-exempt bonds through the imposition of an emergency assessment of up to 2% in addition to

the regular FIGA assessment of up to 2%. The guaranty association is authorized to charge the emergency assessment for the life of the bonds. The bill also raises the limit FIGA may pay on a covered claim that is a homeowners' insurance claim from \$300,000 to \$500,000.

The bill eliminates the need for an affected policyholder to file a "proof of claim" form before receiving a refund of unearned premium or a claim settlement from FIGA if the insurer's records are sufficient to indicate premiums collected and claims outstanding.

The powers and duties of FIGA are outlined in s. 631.57, F.S. The bill amends that law to authorize FIGA to enter into a contract with a municipality or a county, or a combination of the two, for the issuance of tax-exempt revenue bonds. Bond proceeds will be used by the city or county for hurricane recovery, although the proceeds are not required to be used exclusively within the boundaries of the issuing city or county. This means that the bond proceeds may be used by FIGA to settle unpaid claims or to refund unearned premiums to citizens of the state affected by the hurricane, even if the claimant's residence is not in the city or county that issues the bonds. Bonds may be issued by any local government substantially affected by a category 1 or stronger hurricane.

The bill authorizes FIGA to impose an emergency assessment of up to 2% for bond payments; the emergency assessment is in addition to the regular FIGA assessment of up to 2%. As with the FIGA regular assessment, the emergency assessment will be based upon an insurer's direct written premiums in the previous year, after the insurer makes any refunds. The bill specifically applies the emergency assessment only for bond payments and costs associated with their issuance. The FIGA board of directors may require the emergency assessment to be paid in a single payment or in 12 monthly installments.

The bill requires FIGA to file a report annually with the Senate President, the Speaker of the House, and the Chief Financial Officer (CFO). The report must specify the amount of bond proceeds used each year, the number of claims settled, and analyze the amount of emergency assessment needed to retire the bonds as promised. The bill specifies that the emergency assessment is not a premium and thus, is not subject to the premium tax, the payment of commissions, or other fees.

Insurers are required by the bill to report their emergency assessments as part of the reports they file with the OIR related to setting rates. This reporting is intended to ensure that each insurer charges premiums sufficient to satisfy its reserve requirements and to meet the other liquidity requirements in law.

The bill includes several pages of legislative findings relating to the potential damage to the state if hurricane damage is not addressed and repaired quickly, especially if insurers become insolvent due to hurricane claims. The findings acknowledge the personal hardship to persons and families who suffer losses during a hurricane and the need for claims to be settled expeditiously. Otherwise, the findings realize that great damage can occur to the economy and the citizens of the state. The findings also recognize the success of the FIGA bonds issued in 1993 and their potential for future use. The legislative findings likely will be used as part of the supporting documents that accompany any future bond issue for hurricane recovery.

The bill authorizes several uses for bonds issued for hurricane recovery. Among the authorized uses is the payment of covered claims of an insolvent insurer; to refinance or replace previous borrowings; to fund reserves for the bonds; to pay expenses incident to bond issuance; and other similar enumerated purposes. The state promises not to take any action that could endanger the availability of funds to repay the bonds.

#### **Task Force on Hurricane Mitigation and Hurricane Insurance for Mobile and Manufactured Homes**

As noted previously, there is no consensus as to the number of mobile/manufactured homes in Florida. Reports based on the same 2000 Census data place the number at over 600,000 and over 850,000. However, there is consensus that the majority of Florida's mobile and manufactured homes were built prior to 1995.

In 1974, Congress designated the U.S. Department of Housing and Urban Development (HUD) to set standards for the construction of mobile homes. On June 15, 1976, new country-wide regulations were implemented and HUD took full control over the manufacture of mobile homes. Mobile homes were constructed to the same standards nationwide until 1994 when HUD implemented changes in response to damage from Hurricane Andrew. The changes implemented three wind zones, with HUD specifying the wind zones for all areas of the United States. The changes also required mobile homes to be manufactured for each wind zone and restricted mobile home dealers from selling a mobile home to a customer that is not designed for the wind zone area where the customer intends to install the home.<sup>73</sup>

In 1996, the Department of Highway Safety and Motor Vehicles (DHSMV) began regulating the installation of mobile homes in Florida. Florida implemented more stringent tie-down standards, by rule, in 1999.<sup>74</sup> Florida's mobile home installation program is generally considered a model for the United States.<sup>75</sup>

DHSMV's assessment of mobile home damage after the 2004 hurricanes showed homes constructed after 1994 (in accordance with the enhanced construction requirements by HUD) withstood hurricane force winds and remained intact with minor to no damage. Homes installed pursuant to the more stringent tie-down standards remained on their foundation with no movement. Although DHSMV found some destroyed mobile homes in their assessment, many of the destroyed homes were installed prior to the enhanced tie-down standards being implemented.<sup>76</sup> DHSMV found similar results in its assessment of mobile home damage due to Hurricane Wilma.<sup>77</sup>

Many in the mobile home industry have commented on the lack of homeowners' insurance for these homes in the private market and Citizens' policy numbers support this problem. As indicated previously, Citizens' mobile home policies in the PLA jumped from 12,028 in October 2003 to 62,029 in October 2005 (a 2-year period) and the number of such policies in the HRA jumped from 12,552 to 14,056 for the same time period.<sup>78</sup> Also, although new insurers are entering the market and are writing hurricane insurance for mobile homes, they are restricting their coverage to post-1994 mobile homes.<sup>79</sup> Additionally, a number of insurers historically writing hurricane insurance for mobile homes have revised their underwriting guidelines to exclude older mobile homes.<sup>80</sup>

The bill creates a ten-member Task Force on Hurricane Mitigation and Hurricane Insurance for Mobile and Manufactured Homes. The task force is to study issues relating to hurricane mitigation and hurricane insurance for mobile and manufactured homes. OIR is to provide administrative support. The

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<sup>73</sup> See Mobile Home Damage Assessment From Hurricane Wilma 2005, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 29, 2005, at page 1; *Third Party Analysis of Manufactured Home Retrofit Tie Downs*, report by FEMA, June 2005 at pages 9-10.

<sup>74</sup> See Mobile Home Damage Assessment From Hurricane Wilma 2005, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 29, 2005, at page 2; *Third Party Analysis of Manufactured Home Retrofit Tie Downs*, report by FEMA, June 2005 at pages 9-10.

<sup>75</sup> Mobile Home Damage Assessment From Hurricane Wilma 2005, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 29, 2005, at page 2.

<sup>76</sup> Mobile Home Damage Assessments From Hurricanes Charley, Frances, Ivan, and Jeanne, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 10, 2004, at page iv.

<sup>77</sup> Mobile Home Damage Assessment From Hurricane Wilma 2005, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 29, 2005, at page iii.

<sup>78</sup> The Task Force on Long Term Solutions to Florida's Hurricane Insurance Market report adopted March 6, 2006, page 28.

<sup>79</sup> *Id.* at page 35.

<sup>80</sup> *Id.* at page 28.

Task Force is to receive substantive staff support from the Governor's office, the DFS, the OIR, the DHSMV, and the DCA. The bill provides appointment of Task Force members by the Governor, the Chief Financial Officer, the President of Senate, and the Speaker of House of Representatives. The Task Force includes the Commissioner of OIR, the Executive Director of Citizens, and the CEO of Federal Alliance for Safe Homes as members.

The bill requires the Task Force to make recommendations to the Legislature regarding the creation and maintenance of insurance capacity for mobile and manufactured homes and the effectiveness of hurricane mitigation measures for such homes. It requires the Task Force to gather information on specific subjects, including number, age, size, and location of mobile and manufactured homes in Florida, the extent of hurricane mitigation measures prevent or lessen damage to such homes, and the extent to which insurance discounts for mitigated mobile or manufactured homes would increase insurance capacity for such homes. The Task Force must issue a report to the Legislature of their findings by January 1, 2007.

### **Report on Insurability of Attached or Free Standing Structures to Homes**

The Task Force on Long-Term Solutions for Florida's Hurricane Insurance Market (Task Force) received testimony and information suggesting effective mitigation measures for carports, pool enclosures, and other attached structures may not exist, particularly those attached to mobile homes.<sup>81</sup> The Task Force recommended conducting an analysis to determine whether mobile homes with attached structures are insurable risks and whether or not they should be insured by the admitted market. Importantly, add-ons to mobile homes are not subject to the HUD mobile home construction standards. Rather, the Florida Building Code and local ordinances govern their construction.<sup>82</sup>

Furthermore, an investigation by the *Palm Beach Post* indicated insurers incurred significant losses from Hurricane Wilma due to pool enclosures that did not withstand hurricane force winds during the 2004 and 2005 hurricane seasons.<sup>83</sup>

The bill requires the OIR to submit a report to the Legislature by January 1, 2007, regarding the insurability of attached or free standing structures to residential, mobile or manufactured homes; the increase or decrease in insurance costs associated with insuring such structures; the feasibility of insuring such structures; whether mitigation to such structures can reduce loss; and the impact on homeowners of not having such structures insured. In writing the report, the OIR is required to work with the DHSMV, the DCA, the Florida Building Commission, the Florida Home Builders Association, representatives of the property and casualty insurance industry and representatives of the mobile and manufactured home industry.

### **Hurricane Deductible Buy-Down Program**

The bill requires the OIR to submit a report to the Legislature by January 1, 2007, regarding requiring insurers to provide an opportunity for policyholders to decrease the amount of their hurricane deductible as long as the policyholder implements hurricane mitigation measures.

## **C. SECTION DIRECTORY:**

**Section 1:** Amends s. 215.555, F.S., relating to the Florida Hurricane Catastrophe Fund.

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<sup>81</sup> *Id.* at page 28.

<sup>82</sup> Mobile Home Damage Assessments From Hurricanes Charley, Frances, Ivan, and Jeanne, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 10, 2004, at page iv.

<sup>83</sup> <http://www.palmbeachpost.com/storm/content/storm/reports/2005/screens/> (last viewed March 12, 2006).

**Section 2:** Creates s. 215.558, F.S., relating to The Florida Hurricane Damage Prevention Endowment.

**Section 3:** Creates s. 215.5586, F.S., relating to the Florida Comprehensive Damage Mitigation Program.

**Section 4:** Creates s. 252.63, F.S., relating to the Commissioner of Insurance Regulation; powers in a state of emergency.

**Section 5:** Amends s. 626.918, F.S., relating to eligible surplus lines insurers.

**Section 6:** Amends s 627.062, F.S., relating to rate standards.

**Section 7:** Amends s. 627.0628, F.S., relating to Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.

**Section 8:** Amends s. 627.06281, F.S., relating to public hurricane loss projection model; reporting of data by insurers.

**Section 9:** Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

**Section 10:** Amends s. 627.4035, F.S., relating to cash payment of premiums; claims.

**Section 11:** Amends s. 627.7011, F.S., relating to homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.

**Section 12:** Creates s. 627.7019, F.S., relating to standardization of requirements applicable to insurers after natural disasters.

**Section 13:** Amends s. 627.727, F.S., to correct a cross-reference.

**Section 14:** Amends s. 631.181, F.S., relating to filing and proof of claim.

**Section 15:** Amends s. 631.54, F.S., relating to definitions.

**Section 16:** Amends s. 631.55, F.S., to correct a cross reference.

**Section 17:** Amends s. 631.57, F.S., relating to powers and duties of the association.

**Section 18:** Creates s. 631.695, F.S., relating to revenue bond issuance through counties or municipalities.

**Section 19:** States that no provision in ss. 631.57 and 631.695, F.S., may be repealed until all bonds issued under the laws are paid in full.

**Section 20:** Amends s. 817.234, F.S., relating to false and fraudulent insurance claims.

**Section 21:** Creates the Task Force on Hurricane Mitigation and Hurricane Insurance for Mobile and Manufactured Homes.

**Section 22:** Requires OIR to submit a report on the insurability of attached or free standing structures to homes.

**Section 23:** Requires OIR to submit a report on implementation of hurricane deductible buy-downs.

**Section 24:** Appropriates \$100 million from the General Revenue Fund to the DFS for the Florida Hurricane Damage Prevention Endowment, as a nonrecurring appropriation for the purposes specified in s. 215.558, F.S. Appropriates \$400 million from the General Revenue Fund to the Department of Financial Services, as a nonrecurring appropriation for the purposes specified in s. 215.5586, F.S.

**Section 25:** Appropriates \$920 million from non-recurring General Revenue for transfer to Citizens Property Insurance Corporation.

**Section 26:** Appropriates \$675,000 from trust funds to the Office of Insurance Regulation.

**Section 27:** Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

Including a 25% rapid cash buildup in the FHCF premium is estimated to add an additional \$200 million to the FHCF.

#### 2. Expenditures:

The bill appropriates \$500 million from the General Revenue Fund for the endowment and damage mitigation programs. The bill also appropriates \$920 million from the General Revenue Fund to cover the regular assessments for the 2005 Citizens' deficit accounts. The bill appropriates \$675,000 from the Insurance Regulatory Trust Fund to OIR to fund costs associated with the bill.

	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>
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#### Department of Financial Services:

##### General Revenue Fund:

##### Non-recurring:

Transfer to the Florida Hurricane  
Damage Prevention Trust Fund for  
the Florida Hurricane Damage  
Prevention Endowment

	\$100,000,000	\$	0	\$	0
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Transfer to the Florida Hurricane  
Damage Prevention Trust Fund

	400,000,000		0		0
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Transfer to Citizens Property Insurance  
Corporation

	920,000,000		0		0
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Total Non Recurring GR	\$1,420,000,000		0		0
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##### Florida Hurricane Damage Prevention Trust Fund:

##### Non-recurring:

Special Category – FL Comprehensive  
Hurricane Damage Mitigation Program

	400,000,000		0		0
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Recurring:

Special Category-Financial Incentives For Hurricane Damage Prevention	5,000,000	5,000,000	5,000,000
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Total – FL Hurricane Damage Prevention Trust Fund	405,000,000	5,000,000	5,000,000
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Office of Insurance Regulation

Contractual Services			
Non-Recurring	425,000	0	0
Recurring	250,000	250,000	250,000
Total – Insurance Regulatory Trust Fund	675,000	250,000	250,000

Total Appropriations:			
General Revenue Fund	1,450,000	0	0
 Florida Hurricane Damage Prevention Trust Fund	405,000,000	5,000,000	5,000,000
Insurance Regulatory Trust Fund	675,000	250,000	250,000

See D. Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Local governments are eligible to receive matching grant money for hurricane mitigation programs through the endowment program and for installation of hurricane mitigation measures through the Florida Comprehensive Hurricane Damage Mitigation Program.

Cities and counties are authorized by the bill to issue tax-exempt revenue bonds for hurricane recovery. The bonds will be repaid by FIGA using an emergency assessment of up to 2 percent on the total premiums of insurers who are members of FIGA.

Bond proceeds may be used by a city or county substantially affected by a category 1 or stronger hurricane for rebuilding and repair of damaged structures. The proceeds will be available to a citizen whose insurer becomes insolvent following a hurricane; bond monies will settle the valid claims of insolvent insurers and refund unearned premiums to affected policyholders.

2. Expenditures:

A city or county that issues revenue bonds under the bill is not required to repay the bonds from its own revenues. Rather, FIGA is authorized to charge its members an emergency assessment of up to 2 percent annually, for the life of the bonds. Expenses associated with issuing the bonds will be paid from bond proceeds. This means the costs to a city or county that issues the bonds should be negligible.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Including a 25% rapid cash buildup in the FHCF premium is estimated to increase the premium homeowners pay for residential property insurance by 3% on average. However, the premium increase per policyholder will vary.

The adoption of a residual market risk load in Citizens' rates will likely increase their premiums; however, over time, it should reduce the likelihood of assessments on all homeowners.

Allowing private insurers to use an individual rate to write homeowners' insurance for dwellings insured at over \$1 million and condominium unit owners' contents policies insured for over \$1 million may increase surplus for insurers; however, the insurers also assume the risk for these high dollar policies.

Homeowners with homes insured for over \$1 million or with condominium unit contents insured for over \$1 million may have an increase in homeowners' premiums because they are required by the bill to get homeowners' insurance from surplus lines insurers or from voluntary market insurers under an individual rate.

If a surplus lines insurer or authorized insurer decides to write a Citizen's nonhomestead policy, the policyholder's rates could increase above what would be charged by the Citizens nonhomestead rate. However, this provision may encourage surplus lines and authorized insurers to write policies for Citizens' policyholders thus reducing Citizens' exposure.

Excluding homes insured for over \$1 million or with condominium unit contents insured for over \$1 million should decrease the amount and likelihood of a future assessment against Florida homeowners and Citizens' policyholders as the exclusion will reduce Citizens' exposure.

If Citizens incurs a deficit in the future, the assessment against Florida homeowners will be less than under current law because the bill requires Citizens to spread the deficit assessment over Florida homeowners and its homestead policyholders.

Citizens' policyholders who choose to buy policies with coverages more restrictive than a standard homeowner's policy may have a lower premium; however, they will also have less coverage in case of loss.

Restricting Citizens' take-out bonuses to \$100/policy will enable Citizens to save money. More money means either Citizens will not incur a deficit or any deficit incurred will be reduced by the amount of the additional money, leading to less assessments.

Restricting Citizens' take-out bonuses to \$100/policy may reduce the number of policies taken out, thus maintaining Citizens' exposure.

Requiring Citizens to set rates in the nonhomestead account for a 250-year PML is likely to raise rates for these property owners.

Requiring Citizens to purchase reinsurance for a 250 year PML for the nonhomestead account may eliminate or reduce any future deficit in that account, thus eliminating or reducing any assessment among the account policyholders. However, Citizens' surplus will be reduced by the cost of the reinsurance.

Requiring properties insured by Citizens for \$250,000 or more to have a 5% hurricane deductible may increase the deductible for policyholders because under current law, these policyholders may have a lower deductible. An increased deductible means more out-of-pocket costs to the policyholder if there is a loss.

The adoption of flex rating for property insurance may result in rate increases; however, any increase is limited to 10% statewide or 15% per rating territory per year. Additionally, flex rating may encourage insurers to increase rates in small increments rather than waiting and filling a large rate increase. Thus, homeowners will not incur large rate increases at one time; they may be spread out over a year's



period. Additionally, because insurers will not have to do a full rate filing to charge a rate under the flex rating allowance, insurers will save administrative expenses associated with rate filings.

Specified homeowners are eligible to receive free hurricane inspections for their homes under the Florida Comprehensive Hurricane Damage Mitigation Program. They are also eligible to receive grant money to install hurricane mitigation measures through the program. No interest loans for installation of hurricane mitigation measures are available to the homeowners through the endowment program.

Removing the requirement that insurers must pay replacement costs for personal property will decrease insurance proceeds to policyholders if there is a loss related to their insured personal property because depreciation will be taken into account. This may reduce premiums as an insurer's exposure will be reduced.

The bill ensures that FIGA will have funds sufficient to pay the valid claims and unearned premium of any insurer who becomes insolvent following a hurricane that hits Florida. This assurance should enable the economies of communities affected by a category 1 or stronger hurricane to recover quickly and efficiently.

Insurers who are members of FIGA will be required to pay an emergency assessment of up to 2 percent of their respective premiums for the previous year to repay the bonds. Based upon the outstanding insurance policies in Florida for 2003, a 2 percent assessment on FIGA members would cost insurers an estimated \$188 million.

Increasing the FIGA limit for homeowner's claims from \$300,000 to \$500,000 will allow some homeowners to obtain an additional \$200,000 from FIGA if their homeowner's insurer goes insolvent.

#### D. FISCAL COMMENTS:

##### Florida Hurricane Damage Prevention Endowment

The bill has a non-recurring appropriation of \$100 million from the General Revenue Fund for the Florida Hurricane Damage Prevention Endowment that will be invested, rather than spent; it will be used to generate an income stream of approximately \$5 million a year that will be used to pay lending institutions for interest on loans they make to homeowners for implementation of mitigation measures. The General Revenue funding is transferred to the Florida Hurricane Damage Prevention Trust Fund and subsequently transferred to the State Board of Administration for investment. The bill provides appropriations from the trust fund to provide interest payment on loans.

##### Florida Comprehensive Hurricane Damage Mitigation Program

An additional non-recurring appropriation of \$400 million from the General Revenue Fund to the DFS is provided to fund the inspections, grants, no-interest loans and public education and consumer awareness. The General Revenue funding is transferred to the Florida Hurricane Damage Prevention Trust Fund for specific program expenditures as authorized.

##### Office of Insurance Regulation

Impact: Section 6

Annual Reporting Requirement

Estimate: \$250,000 annually

Specify the impact of flexible rate regulation under paragraph (2)(j) on the degree of competition in insurance markets in this state -- year-by-year comparison of the number of companies participating in the market for each class of insurance and the relative rate levels, including -- 1) the number of rate filings made under paragraph (2)(j), the rate levels under those filings, and the market share affected by those filings; 2) the number of filings made on a file and use basis, the rate levels under those filings, and the market share affected by those filings; 3) The number of filings made on a use and file basis, the rate levels under those filings, and the market share affected by those filings; 4) recommendations to promote competition in the insurance market and further protect insurance consumers.

Rationale:

- In order for the Office to make recommendations promoting competition and protecting insurance consumers, the Office will need a recurring appropriation of \$250,000 to perform the comprehensive analysis and study, each year, as defined in the proposed committee bill;
- The cost is estimated based upon the Office hiring an outside consultant to perform the study. Cost estimate based on comparison with the \$300,000 paid to Florida State University to perform a comprehensive sinkhole study in 2005.

Impact: Section 21 Task Force

Panel and Administrative Support Impact \$100,000

Task Force on Hurricane Mitigation and Hurricane Insurance for Mobile and Manufactured Homes. — (9 Members); To make recommendations relating to the creation and maintenance of insurance capacity sufficient to ensure that all mobile and manufactured home owners in this state are able to obtain appropriate insurance coverage; evaluate the effectiveness of hurricane mitigation measures for mobile or manufactured homes; Report to Governor, CFO, President of the Senate and Speaker of the House.

Rationale:

Contract with vendor for administration of Task Force; expense of meeting 2 times each month for 4 months. This cost is based upon a previous external contract with an external vendor to coordinate the Long Term Hurricane Solutions Task Force in FY 2005-2006.

Impact: Section 22 Report Directive

Report Production/Consultant Services \$150,000

Report on the insurability of attached or free standing structure to residential homes, mobile or manufactured homes – such as carports, pool enclosures –

- Increase or decrease in insurance costs; feasibility of insuring such structures; impact to homeowners of not having coverage for such structures; ability of mitigation measures to reduce risk and loss;
- Must consult with DHSMV, DCA, Florida Home Builders Associations, representatives of mobile and manufactured home industry, insurers, and any other party OIR determines appropriate

Rationale:

The Office will need to hire external contractors/actuaries to produce results from engineering consultants, consultants from additional state agencies, industry representatives, and conduct loss cost surveys.

Impact: Section 23 Report Directive

Report Production/Consultant Services \$175,000

Report of findings and recommendations on requiring residential property insurers to provide an opportunity for policyholders to decrease the monetary amount of a hurricane deductible predicated upon the policyholder demonstrating certifiable and verifiable mitigation measures that reduce hurricane damage; address the feasibility of requiring mitigation certification and the specific procedures necessary for implementation and include suggested legislation; and include other related information as the office determines is appropriate for the Legislature to consider.

Rationale:

OIR must, by directive, consult with consumers, insurers, builders, wind certification inspectors, organizations dedicated to promoting disaster safety and property loss mitigation, counties, municipalities, and state agencies as well as any other entity that the office determines could provide relevant information.

OIR will need to hire an outside consultant/actuary to complete the required study.

- The estimate is based upon the Office's last two actuarial studies: a) Medical Malpractice Presumed (Rating) Factor - \$191,550 and b) Florida Health Insurance Plan - \$150,000.

Comments on other fiscal issues:

#### FIGA

The costs to FIGA for implementing the bill should be minimal. Any costs incurred for preparing and offering the revenue bonds authorized by the bill will be paid from the bond proceeds.

#### Citizens

The number of nonhomestead properties in Florida that will be insured by Citizens and thus subject to higher rates is indeterminate. The number of properties currently in Florida that would be considered nonhomestead by the bill's provisions is also indeterminate.

Although Citizens could not estimate the impact on rates creating a homestead account with a 100 year PML and a nonhomestead account with a 250 year PML or its cost to purchase reinsurance for a 250 year PML for the nonhomestead account, the following information was provided by Citizens' on their current account structure:

#### **Personal Lines Account**

	<b>Probable Maximum Loss</b>	<b>Estimated Cost of Reinsurance</b>	<b>Indicated Rate Change (HO3)*</b>	<b>Filed Actuarial Rate Change (HO3)</b>	<b>Difference in Rates</b>
1 in 50 year event	\$1.3 billion	\$107-\$119 million	6.1% **	21.3%	-15.2%
1 in 100 year event	\$2.2 billion	\$180-\$207 million	19.5%	21.3%	-1.8%
1 in 250 year	\$3.7 billion	\$267-\$310 million	36.1%	21.3%	14.8%

#### **High Risk Account (Personal Residential Portion)**

	<b>Probable Maximum Loss</b>	<b>Estimated Cost of Reinsurance</b>	<b>Indicated Rate Change*</b>	<b>Filed Actuarial Rate Change</b>	<b>Difference in Rates</b>
1 in 50 year event	\$6.4 billion	\$677-\$755 million	62.1%***	45.2%	16.9%
1 in 100 year event	\$10.3 billion	\$.992-\$1.1 billion	103.2%	45.2%	58.0%
1 in 250 year event	\$17.0 billion	\$1.36-\$1.57 billion	155.2%	45.2%	110.0%

**NOTE:** Estimates are based on current exposures in the PLA and the HRA (personal residential only).

\* Increase in rates necessary to cover costs of proposed reinsurance.

\*\* Rate indication does not include the Note Financing Factor that would be needed to procure pre-event financing to the 1 in 100 year PML.

\*\*\* Rate indication does not include the 15% Catastrophe Financing that would be needed to procure pre-event financing to the 1 in 100 year PML.

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

The mandates provision does not apply because this bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

The bill gives the DCA rule-making authority to adopt rules governing the wind certification and wind mitigation inspection program.

The bill gives the Financial Services Commission (FSC) rulemaking authority to adopt rules setting forth the standard rules insurers must follow regarding claims reporting, grace periods for payment of premiums and performance of other duties by policyholders, and temporary postponement of cancellations and non-renewals. The bill also requires the FSC to begin rulemaking by June 1, 2006.

The bill provides the DFS with rulemaking authority to adopt rules to implement the Florida Comprehensive Hurricane Damage Mitigation Program.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On March 16, 2006, the Insurance Committee considered the bill, adopted 22 amendments, and reported the bill favorably. The amendments made technical and substantive changes to the bill. The substantive changes made:

- allows agents to get claims and underwriting information for policies ineligible for Citizens due to the \$1 million restriction in order to try to find coverage for the properties in the private market and provides a procedure for receipt of the information and a procedure for the policyholder to request Citizens to maintain the confidentiality of the information;
- adds and amends a provision in the laws governing FIGA. Eliminates the need for an affected policyholder to file a "proof of claim" form before receiving a refund of unearned premium or a claim settlement from FIGA if the insurer's records are sufficient to indicate premiums collected and claims outstanding;
- requires Citizens to report to the Legislature regarding the feasibility of requiring private insurers to issue and service Citizens' wind-only policies if the insurer writes the other peril portion of the policy;
- provides for automatic approval of an insurer's rate request for the wind portion of a policy if the rate requested is lower than Citizens' approved rate;
- provides immunity to insurance agents and their employees relating to coverage differences and insolvencies of insurers for depopulation activities;

- creates a panel to study Citizens wind-only zones and to recommend to the Legislature each year the areas that should be eligible for the wind-only zones. Requires the panel to report by November 30, 2006, on eligibility of specified areas for the wind-only zones;
- allows an insurer in the private market to issue a homeowner's policy on nonhomestead property eligible for Citizens on an individual rate basis. Allows the OIR to review such rate to determine if the rate is inadequate or unfairly discriminatory;
- allows an insurer in the private market to issue a homeowner's policy on an individual rate basis on homes insured for \$1 million or more and thus ineligible for coverage in Citizens. Allows the OIR to review such rate to determine if the rate is inadequate or unfairly discriminatory;
- removes the repeal of the Panhandle exemption in the building code;
- provides the Commissioner of the OIR with power to enact emergency rules during a state of emergency;
- clarifies the increase in the FIGA limit on claims from \$300,000 to \$500,000 only applies to homeowners' insurance claims and defines "homeowner's insurance" for use under the FIGA statute;
- clarifies an insurer retains the ability to determine whether damage can be repaired or replaced;
- decreases rate flexibility for property insurers from a statewide average of 10 percent increase or decrease to 5 percent; and
- decreases rate flexibility for property insurers in a single territory from 15 percent to 10 percent.

On April 17, 2006, the Fiscal Council considered the bill, adopted 6 amendments, and reported the bill favorably. The amendments included the following changes:

- Changes the program administrator of the mitigation program from the Department of Community Affairs to the Department of Financial Services.
- Establishes the Florida Comprehensive Hurricane Damage Mitigation Program with in the Department of Financial Services; Provides inspections, grants, no-interest loans, and public education and consumer awareness.
- Expands the financial instruments of Citizens Property Insurance Corporation that are exempt for documentary stamp tax.
- Appropriates \$100 million from General Revenue for an endowment to fund the no-interest mitigation loan program; Provides a trust fund appropriation to make interest payments.
- Appropriates \$400 million from General Revenue for the Florida Comprehensive Hurricane Damage Mitigation Program; Provides for the transfer to the trust fund and appropriates program costs from the trust fund; Appropriates \$675,00 from the Insurance Regulation Trust Fund to the office of Insurance Regulation.
- Appropriates \$920 million from General Revenue for transfer to the Citizens Property Insurance Corporation to cover a portion of the 2005 deficit accounts; Provides that any emergency assessments be amortized over a 10-year period.
- Deletes provisions to limit coverage on mobile or manufacture homes built prior to 1994.

The staff analysis was updated to reflect the adoption of the amendments.

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CHAMBER ACTION

The Fiscal Council recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to property and casualty insurance;  
amending s. 215.555, F.S.; revising a definition; revising  
certain reimbursement contract criteria; revising certain  
reimbursement premium requirements; revising certain  
revenue bond emergency assessment requirements; creating  
s. 215.558, F.S.; creating the Florida Hurricane Damage  
Prevention Endowment; providing a purpose and legislative  
intent; providing definitions; providing requirements and  
authority for investment of endowment assets by the State  
Board of Administration; requiring a report to the  
Legislature; providing for payment of the board's  
investment services' costs and fees from the endowment;  
providing requirements of the Department of Financial  
Services in providing financial incentives for residential  
hurricane damage prevention activities; providing for an  
interest-free loan program; providing program criteria and  
requirements; creating an advisory council for certain  
purposes; providing for appointment of members; requiring

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24 members to serve without compensation; providing for per  
25 diem and travel expenses; creating s. 215.5586, F.S.;  
26 establishing the Florida Comprehensive Hurricane Damage  
27 Mitigation Program within the Department of Financial  
28 Services; providing qualifications for the program  
29 administrator; providing program components; requiring the  
30 department to adopt rules; requiring the department to  
31 adopt rules; creating s. 252.63, F.S.; providing purpose  
32 and intent; providing powers of the Commissioner of  
33 Insurance Regulation during a state of emergency;  
34 providing a purpose and intent; authorizing the  
35 commissioner to issue certain orders in a state of  
36 emergency; providing for effect and duration of such  
37 orders; providing for legislative termination of such  
38 orders; requiring the commissioner to publish such orders  
39 and an explanatory statement; amending s. 626.918, F.S.;  
40 authorizing certain letters of credit to fund an insurer's  
41 required policyholder protection trust fund; providing a  
42 definition; amending s. 627.062, F.S.; specifying certain  
43 rate filings as not subject to office determination as  
44 excessive or unfairly discriminatory; providing  
45 limitations; providing a definition; prohibiting certain  
46 rate filings under certain circumstances; preserving the  
47 office's authority to disapprove certain rate filings  
48 under certain circumstances; providing procedures for  
49 insurers submitting certain rate filings; specifying  
50 nonapplication to certain types of insurance; specifying  
51 approval of certain rate filings under certain

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52 circumstances; providing an exception; requiring the  
53 office to provide annual reports on the impact of certain  
54 rate regulations; specifying report requirements; amending  
55 s. 627.0628, F.S.; prohibiting certain office or consumer  
56 advocate questions of certain models reviewed by the  
57 commission; amending s. 627.06281, F.S.; prohibiting the  
58 office from using certain hurricane loss projection models  
59 under certain circumstances; amending s. 627.351, F.S.,  
60 relating to the Citizens Property Insurance Corporation;  
61 providing additional legislative intent; specifying  
62 application to homestead property; specifying the existing  
63 three separate accounts of the corporation as providing  
64 coverage only for homestead property; providing a  
65 definition; providing for an additional separate account  
66 for nonhomestead property; requiring separate maintenance  
67 of revenues, assets, liabilities, losses, and expenses  
68 attributable to the nonhomestead account; providing  
69 authority and requirements for coverage rates for  
70 nonhomestead properties; providing for office review of  
71 such rates or rating plans for being inadequate or  
72 unfairly discriminatory; authorizing the office to order  
73 discontinuance of certain policies under certain  
74 circumstances; requiring insurers to maintain certain  
75 records; providing for reducing regular assessments by the  
76 Citizen policyholder surcharge under certain  
77 circumstances; providing for deficit assessments against  
78 nonhomestead account policyholders under certain  
79 circumstances; authorizing the board of governors of the

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80        corporation to make loans from the homestead accounts to  
81        the nonhomestead account under certain circumstances;  
82        specifying ineligibility of certain nonhomestead account  
83        policyholders for certain coverage under certain  
84        circumstances; revising the requirements of the plan of  
85        operation of the corporation; requiring additional  
86        procedures for determining eligibility of a risk for  
87        coverage; providing for determination of regular  
88        assessments to which the Citizen policyholder surcharge  
89        applies; specifying a minimum requirement for a hurricane  
90        deductible for certain property; specifying contents of  
91        required statements in applications for nonhomestead and  
92        homestead account coverage; requiring the corporation to  
93        purchase certain catastrophe reinsurance; providing  
94        additional legislative intent relating to rate adequacy in  
95        the residual market; deleting provisions relating to a  
96        rate methodology panel appointed by the corporation;  
97        providing requirements and limitations for a corporation  
98        adopted bonus payment program; providing a criterion for  
99        calculating reduction or increase in probable maximum  
100       loss; delaying application of certain high-risk area  
101       boundary reduction provisions; providing for application  
102       of provisions relating to homestead and nonhomestead  
103       accounts to certain policies; requiring certain  
104       corporation employees to comply with certain ethics code  
105       requirements; requiring corporation employees to notify  
106       the Division of Insurance Fraud of probable commissions of  
107       fraud by corporation employees; requiring the corporation

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108       to report on the feasibility of requiring authorized  
109       insurers to issue and service specified policies of the  
110       corporation; specifying report requirements; providing  
111       immunity to producing agents and employees for specified  
112       actions taken relating to removal of policies from the  
113       corporation; providing a limitation; providing legislative  
114       intent; creating a High Risk Eligibility Panel; providing  
115       for appointment of panel members and member's terms;  
116       providing for administration of the panel by the  
117       corporation; prohibiting compensation and per diem and  
118       travel expenses; providing an exception; requiring the  
119       panel to report annually to the Legislature on the certain  
120       areas that should be included in the Citizens Property  
121       Insurance Corporation high risk account; specifying  
122       factors to be considered by the panel; providing duties of  
123       the office; authorizing the office to conduct public  
124       hearings; requiring the panel to conduct an analysis of  
125       property eligible for the high-risk account in specified  
126       areas; requiring the panel to submit a report to the  
127       office and corporation; providing requirements of the  
128       report; amending s. 627.4035, F.S.; providing for a waiver  
129       of a written authorization requirement to pay claims by  
130       debit card or other electronic transfer; providing  
131       construction relating to limiting the liability of an  
132       insurer for certain replacement costs; amending s.  
133       627.7011, F.S.; limiting certain law and ordinance  
134       coverage; deleting application to personal property;  
135       requiring insurers to issue separate checks for certain

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136        expenses and requiring certain checks to be issued  
137        directly to a policyholder; creating s. 627.7019, F.S.;  
138        requiring the Financial Services Commission to adopt rules  
139        imposing standardized requirements applicable to insurers  
140        after certain natural events; providing criteria;  
141        providing requirements of the Office of Insurance  
142        Regulation; prohibiting certain conflicting emergency  
143        rules; amending s. 627.727, F.S.; correcting a cross-  
144        reference; amending s. 631.181, F.S.; providing an  
145        exception to certain requirements for a signed statement  
146        for certain claims; providing requirements; amending s.  
147        631.54, F.S.; defining the term "homeowner's insurance";  
148        amending s. 631.55, F.S.; correcting a cross-reference;  
149        amending s. 631.57, F.S.; revising requirements and  
150        limitations for obligations of the Florida Insurance  
151        Guaranty Association for covered claims; authorizing the  
152        association to contract with counties, municipalities, and  
153        legal entities to issue revenue bonds for certain  
154        purposes; authorizing the Office of Insurance Regulation  
155        to levy assessments and emergency assessments on insurers  
156        under certain circumstances for certain bond repayment  
157        purposes; providing requirements for and limitations on  
158        such assessments; providing for payment, collection, and  
159        distribution of such assessments; requiring insurers to  
160        include an analysis of revenues from such assessments in a  
161        required report; providing rate filing requirements for  
162        insurers relating to such assessments; providing for  
163        continuing annual assessments under certain circumstances;

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164 specifying emergency assessments as not premium and not  
165 subject to certain taxes, fees, or commissions; specifying  
166 insurer liability for emergency assessments; providing an  
167 exception; creating s. 631.695, F.S.; providing  
168 legislative findings and purposes; providing for issuance  
169 of revenue bonds through counties and municipalities to  
170 fund assistance programs for paying covered claims for  
171 hurricane damage; providing procedures, requirements, and  
172 limitations for counties, municipalities, and the Florida  
173 Insurance Guaranty Association, Inc., relating to issuance  
174 and validation of such bonds; prohibiting pledging the  
175 funds, credit, property, and taxing power of the state,  
176 counties, and municipalities for payment of bonds;  
177 specifying authorized uses of bond proceeds; limiting the  
178 term of bonds; specifying a state covenant to protect  
179 bondholders from adverse actions relating to such bonds;  
180 specifying exemptions for bonds, notes, and other  
181 obligations of counties and municipalities from certain  
182 taxes or assessments on property and revenues; authorizing  
183 counties and municipalities to create a legal entity to  
184 exercise certain powers; requiring the association to  
185 issue an annual report on the status of certain uses of  
186 bond proceeds; providing report requirements; requiring  
187 the association to provide a copy of the report to the  
188 Legislature and Chief Financial Officer; prohibiting  
189 repeal of certain provisions relating to certain bonds  
190 under certain circumstances; amending s. 817.234, F.S.;  
191 providing an additional circumstance that constitutes

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192 committing insurance fraud; creating the Task Force on  
193 Hurricane Mitigation and Hurricane Insurance for Mobile  
194 and Manufactured Homes; providing for administration by  
195 the office; specifying additional agency administrative  
196 staff; providing for appointment of task force members;  
197 requiring members to serve without compensation; providing  
198 for per diem and travel expenses; providing purpose and  
199 intent; requiring the task force to address specified  
200 issues; requiring a report to the Governor, Chief  
201 Financial Officer, and Legislature; providing for  
202 expiration of the task force; requiring the Office of  
203 Insurance Regulation to submit reports to the Legislature  
204 relating to the insurability of certain attached or free  
205 standing structures and decreases in policyholder  
206 hurricane deductibles based on policyholder hurricane  
207 damage mitigation measures; providing report requirements;  
208 providing duties of the office; providing appropriations;  
209 specifying uses and purposes of appropriations; providing  
210 effective dates.

211

212 Be It Enacted by the Legislature of the State of Florida:

213

214 Section 1. Paragraph (d) of subsection (2), paragraphs (c)  
215 and (d) of subsection (4), paragraph (b) of subsection (5), and  
216 paragraph (b) of subsection (6) of section 215.555, Florida  
217 Statutes, are amended to read:

218 215.555 Florida Hurricane Catastrophe Fund.--

219 (2) DEFINITIONS.--As used in this section:

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220           (d) "Losses" means direct incurred losses under covered  
221 policies, which shall include losses for additional living  
222 expenses not to exceed 40 percent of the insured value of a  
223 residential structure or its contents and shall exclude loss  
224 adjustment expenses. "Losses" does not include losses for fair  
225 rental value, loss of rent or rental income use, or business  
226 interruption losses.

227           (4) REIMBURSEMENT CONTRACTS.--

228           (c)1. The contract shall also provide that the obligation  
229 of the board with respect to all contracts covering a particular  
230 contract year shall not exceed the actual claims-paying capacity  
231 of the fund up to a limit of \$15 billion for that contract year  
232 adjusted based upon the reported exposure from the prior  
233 contract year to reflect the percentage growth in exposure to  
234 the fund for covered policies since 2003, provided the dollar  
235 growth in the limit may not increase in any year by an amount  
236 greater than the dollar growth of the ~~cash~~ balance of the fund  
237 as of December 31 as defined by rule which occurred over the  
238 prior calendar year.

239           2. In May before the start of the upcoming contract year  
240 and in October during the contract year, the board shall publish  
241 in the Florida Administrative Weekly a statement of the fund's  
242 estimated borrowing capacity and the projected balance of the  
243 fund as of December 31. After the end of each calendar year, the  
244 board shall notify insurers of the estimated borrowing capacity  
245 and the balance of the fund as of December 31 to provide  
246 insurers with data necessary to assist them in determining their  
247 retention and projected payout from the fund for loss

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reimbursement purposes. In conjunction with the development of the premium formula, as provided for in subsection (5), the board shall publish factors or multiples that assist insurers in determining their retention and projected payout for the next contract year. For all regulatory and reinsurance purposes, an insurer may calculate its projected payout from the fund as its share of the total fund premium for the current contract year multiplied by the sum of the projected balance of the fund as of December 31 and the estimated borrowing capacity for that contract year as reported under this subparagraph.

(d)1. For purposes of determining potential liability and to aid in the sound administration of the fund, the contract shall require each insurer to report such insurer's losses from each covered event on an interim basis, as directed by the board. The contract shall require the insurer to report to the board no later than December 31 of each year, and quarterly thereafter, its reimbursable losses from covered events for the year. The contract shall require the board to determine and pay, as soon as practicable after receiving these reports of reimbursable losses, the initial amount of reimbursement due and adjustments to this amount based on later loss information. The adjustments to reimbursement amounts shall require the board to pay, or the insurer to return, amounts reflecting the most recent calculation of losses.

2. In determining reimbursements pursuant to this subsection, the contract shall provide that the board shall:

~~a. First reimburse insurers writing covered policies, which insurers are in full compliance with this section and have~~



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~~petitioned the Office of Insurance Regulation and qualified as limited apportionment companies under s. 627.351(2)(b)3. The amount of such reimbursement shall be the lesser of \$10 million or an amount equal to 10 times the insurer's reimbursement premium for the current year. The amount of reimbursement paid under this sub-subparagraph may not exceed the full amount of reimbursement promised in the reimbursement contract. This sub-subparagraph does not apply with respect to any contract year in which the year-end projected cash balance of the fund, exclusive of any bonding capacity of the fund, exceeds \$2 billion. Only one member of any insurer group may receive reimbursement under this sub-subparagraph.~~

a.b. Next pay to each insurer such insurer's projected payout, which is the amount of reimbursement it is owed, up to an amount equal to the insurer's share of the actual premium paid for that contract year, multiplied by the actual claims-paying capacity available for that contract year; provided, entities created pursuant to s. 627.351 shall be further reimbursed in accordance with sub-subparagraph b. e.

b.e. Thereafter, establish the prorated reimbursement level at the highest level for which any remaining fund balance or bond proceeds are sufficient to reimburse entities created pursuant to s. 627.351 based on reimbursable losses exceeding the amounts payable pursuant to sub-subparagraph a. b. for the current contract year.

(5) REIMBURSEMENT PREMIUMS.--

(b) The State Board of Administration shall select an independent consultant to develop a formula for determining the

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304 actuarially indicated premium to be paid to the fund. The  
305 formula shall specify, for each zip code or other limited  
306 geographical area, the amount of premium to be paid by an  
307 insurer for each \$1,000 of insured value under covered policies  
308 in that zip code or other area. In establishing premiums, the  
309 board shall consider the coverage elected under paragraph (4) (b)  
310 and any factors that tend to enhance the actuarial  
311 sophistication of ratemaking for the fund, including  
312 deductibles, type of construction, type of coverage provided,  
313 relative concentration of risks, ~~a factor providing for more~~  
314 ~~rapid cash buildup in the fund until the fund capacity for a~~  
315 ~~single hurricane season is fully funded~~, and other such factors  
316 deemed by the board to be appropriate. The formula may provide  
317 for a procedure to determine the premiums to be paid by new  
318 insurers that begin writing covered policies after the beginning  
319 of a contract year, taking into consideration when the insurer  
320 starts writing covered policies, the potential exposure of the  
321 insurer, the potential exposure of the fund, the administrative  
322 costs to the insurer and to the fund, and any other factors  
323 deemed appropriate by the board. The formula shall include a  
324 factor of 25 percent of the fund's actuarially indicated premium  
325 in order to provide for more rapid cash buildup in the fund. The  
326 formula must be approved by unanimous vote of the board. The  
327 board may, at any time, revise the formula pursuant to the  
328 procedure provided in this paragraph.

329 (6) REVENUE BONDS.--

330 (b) Emergency assessments.--

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331           1. If the board determines that the amount of revenue  
332 produced under subsection (5) is insufficient to fund the  
333 obligations, costs, and expenses of the fund and the  
334 corporation, including repayment of revenue bonds and that  
335 portion of the debt service coverage not met by reimbursement  
336 premiums, the board shall direct the Office of Insurance  
337 Regulation to levy, by order, an emergency assessment on direct  
338 premiums for all property and casualty lines of business in this  
339 state, including property and casualty business of surplus lines  
340 insurers regulated under part VIII of chapter 626, but not  
341 including any workers' compensation premiums or medical  
342 malpractice premiums. As used in this subsection, the term  
343 "property and casualty business" includes all lines of business  
344 identified on Form 2, Exhibit of Premiums and Losses, in the  
345 annual statement required of authorized insurers by s. 624.424  
346 and any rule adopted under this section, except for those lines  
347 identified as accident and health insurance and except for  
348 policies written under the National Flood Insurance Program. The  
349 assessment shall be specified as a percentage of future premium  
350 collections and is subject to annual adjustments by the board to  
351 reflect changes in premiums subject to assessments collected  
352 under this subparagraph in order to meet debt obligations. The  
353 same percentage shall apply to all policies in lines of business  
354 subject to the assessment issued or renewed during the 12-month  
355 period beginning on the effective date of the assessment.

356           2. A premium is not subject to an annual assessment under  
357 this paragraph in excess of 6 percent of premium with respect to  
358 obligations arising out of losses attributable to any one

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359 contract year, and a premium is not subject to an aggregate  
360 annual assessment under this paragraph in excess of 10 percent  
361 of premium. An annual assessment under this paragraph shall  
362 continue for as long as ~~until~~ the revenue bonds issued with  
363 respect to which the assessment was imposed are outstanding,  
364 including any bonds the proceeds of which were used to refund  
365 the revenue bonds, unless adequate provision has been made for  
366 the payment of the bonds under the documents authorizing  
367 issuance of the bonds.

368 3. With respect to each insurer collecting premiums that  
369 are subject to the assessment, the insurer shall collect the  
370 assessment at the same time as it collects the premium payment  
371 for each policy and shall remit the assessment collected to the  
372 fund or corporation as provided in the order issued by the  
373 Office of Insurance Regulation. The office shall verify the  
374 accurate and timely collection and remittance of emergency  
375 assessments and shall report the information to the board in a  
376 form and at a time specified by the board. Each insurer  
377 collecting assessments shall provide the information with  
378 respect to premiums and collections as may be required by the  
379 office to enable the office to monitor and verify compliance  
380 with this paragraph.

381 4. With respect to assessments of surplus lines premiums,  
382 each surplus lines agent shall collect the assessment at the  
383 same time as the agent collects the surplus lines tax required  
384 by s. 626.932, and the surplus lines agent shall remit the  
385 assessment to the Florida Surplus Lines Service Office created  
386 by s. 626.921 at the same time as the agent remits the surplus

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lines tax to the Florida Surplus Lines Service Office. The emergency assessment on each insured procuring coverage and filing under s. 626.938 shall be remitted by the insured to the Florida Surplus Lines Service Office at the time the insured pays the surplus lines tax to the Florida Surplus Lines Service Office. The Florida Surplus Lines Service Office shall remit the collected assessments to the fund or corporation as provided in the order levied by the Office of Insurance Regulation. The Florida Surplus Lines Service Office shall verify the proper application of such emergency assessments and shall assist the board in ensuring the accurate and timely collection and remittance of assessments as required by the board. The Florida Surplus Lines Service Office shall annually calculate the aggregate written premium on property and casualty business, other than workers' compensation and medical malpractice, procured through surplus lines agents and insureds procuring coverage and filing under s. 626.938 and shall report the information to the board in a form and at a time specified by the board.

5. Any assessment authority not used for a particular contract year may be used for a subsequent contract year. If, for a subsequent contract year, the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy an emergency assessment up to an amount not

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415 exceeding the amount of unused assessment authority from a  
416 previous contract year or years, plus an additional 4 percent  
417 provided that the assessments in the aggregate do not exceed the  
418 limits specified in subparagraph 2.

419 6. The assessments otherwise payable to the corporation  
420 under this paragraph shall be paid to the fund unless and until  
421 the Office of Insurance Regulation and the Florida Surplus Lines  
422 Service Office have received from the corporation and the fund a  
423 notice, which shall be conclusive and upon which they may rely  
424 without further inquiry, that the corporation has issued bonds  
425 and the fund has no agreements in effect with local governments  
426 under paragraph (c). On or after the date of the notice and  
427 until the date the corporation has no bonds outstanding, the  
428 fund shall have no right, title, or interest in or to the  
429 assessments, except as provided in the fund's agreement with the  
430 corporation.

431 7. Emergency assessments are not premium and are not  
432 subject to the premium tax, to the surplus lines tax, to any  
433 fees, or to any commissions. An insurer is liable for all  
434 assessments that it collects and must treat the failure of an  
435 insured to pay an assessment as a failure to pay the premium. An  
436 insurer is not liable for uncollectible assessments.

437 8. When an insurer is required to return an unearned  
438 premium, it shall also return any collected assessment  
439 attributable to the unearned premium. A credit adjustment to the  
440 collected assessment may be made by the insurer with regard to  
441 future remittances that are payable to the fund or corporation,  
442 but the insurer is not entitled to a refund.

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9. When a surplus lines insured or an insured who has procured coverage and filed under s. 626.938 is entitled to the return of an unearned premium, the Florida Surplus Lines Service Office shall provide a credit or refund to the agent or such insured for the collected assessment attributable to the unearned premium prior to remitting the emergency assessment collected to the fund or corporation.

10. The exemption of medical malpractice insurance premiums from emergency assessments under this paragraph is repealed May 31, 2010 ~~2007~~, and medical malpractice insurance premiums shall be subject to emergency assessments attributable to loss events occurring in the contract years commencing on June 1, 2010 ~~2007~~.

Section 2. Section 215.558, Florida Statutes, is created to read:

215.558 Florida Hurricane Damage Prevention Endowment.--

(1) PURPOSE AND INTENT.--The purpose of this section is to provide a continuing source of funding for financial incentives to encourage residential property owners of this state to retrofit their properties to make them less vulnerable to hurricane damage, to help decrease the cost of residential property and casualty insurance, and to provide matching funds to local governments and nonprofit entities for projects that will reduce hurricane damage to residential properties. It is the intent of the Legislature that this section be construed liberally to effectuate its purpose.

(2) DEFINITIONS.--As used in this section:

(a) "Board" means the State Board of Administration.

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471        (b) "Corpus" means the money that has been appropriated to  
 472 the endowment by the 2006 Legislature, together with any amounts  
 473 subsequently appropriated to the endowment that are specifically  
 474 designated as contributions to the corpus and any grants, gifts,  
 475 or donations to the endowment that are specifically designated  
 476 as contributions to the corpus.

477        (c) "Earnings" means any money in the endowment in excess  
 478 of the corpus, including any income generated by investments,  
 479 any increase in the market value of investments net of decreases  
 480 in market value, and any appropriations, grants, gifts, or  
 481 donations to the endowment not specifically designated as  
 482 contributions to the corpus.

483        (d) "Endowment" means the Florida Hurricane Damage  
 484 Prevention Endowment created by this section.

485        (e) "Program administrator" means the Department of  
 486 Financial Services.

487        (3) ADMINISTRATION.--

488        (a) The board shall invest endowment assets as provided in  
 489 this section.

490        (b) The board may invest and reinvest funds of the  
 491 endowment in accordance with s. 215.47 and consistent with board  
 492 policy.

493        (c) The investment objective shall be long-term  
 494 preservation of the value of the corpus and a specified regular  
 495 annual cash outflow for appropriation, as nonrecurring revenue,  
 496 for the purposes specified in subsection (4).



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497        (d) In accordance with s. 215.44, the board shall report  
498 on the financial status of the endowment in its annual  
499 investment report to the Legislature.

500        (e) Costs and fees of the board for investment services  
501 shall be deducted from the assets of the endowment.

502        (4) FINANCIAL INCENTIVES FOR RESIDENTIAL HURRICANE DAMAGE  
503 PREVENTION ACTIVITIES.--

504        (a) Not less than 80 percent of the net earnings of the  
505 endowment shall be expended for financial incentives to  
506 residential property owners as described in paragraph (b), and  
507 no more than the remainder of the net earnings of the endowment  
508 shall be expended for matching fund grants to local governments  
509 and nonprofit entities for projects that will reduce hurricane  
510 damage to residential properties as described in paragraph (c).  
511 Any funds authorized for expenditure but not expended for these  
512 purposes shall be returned to the endowment.

513        (b)1. The program administrator, by rule, shall establish  
514 a request for a proposal process to annually solicit proposals  
515 from lending institutions under which the lending institution  
516 will provide interest-free loans to homestead property owners to  
517 pay for inspections of homestead property to determine what  
518 mitigation measures are needed and for improvements to existing  
519 residential properties intended to reduce the homestead  
520 property's vulnerability to hurricane damage, in exchange for  
521 funding from the endowment.

522        2. In order to qualify for funding under this paragraph,  
523 an interest-free loan program must include an inspection of  
524 homestead property to determine what mitigation measures are

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525 needed, a means for verifying that the improvements to be paid  
526 for from loan proceeds have been demonstrated to reduce a  
527 homestead property's vulnerability to hurricane damage, and a  
528 means for verifying that the proceeds were actually spent on  
529 such improvements. The program must include a method for  
530 awarding loans according to the following priorities:

531 a. The highest priority must be given to single-family  
532 owner-occupied homestead dwellings, insured at \$500,000 or less,  
533 located in the areas designated as high-risk areas for purposes  
534 of coverage by the Citizens Property Insurance Corporation.

535 b. The next highest priority must be given to single-  
536 family owner-occupied homestead dwellings, insured at \$500,000  
537 or less, covered by the Citizens Property Insurance Corporation,  
538 wherever located.

539 c. The next highest priority must be given to single-  
540 family owner-occupied homestead dwellings, insured at \$500,000  
541 or less, that are more than 40 years old.

542 d. The next highest priority must be given to all other  
543 single-family owner-occupied homestead dwellings insured at  
544 \$500,000 or less.

545 3. The program administrator shall evaluate proposals  
546 based on the following factors:

547 a. The degree to which the proposal meets the requirements  
548 of subparagraph 2.

549 b. The lending institution's plan for marketing the loans.

550 c. The anticipated number of loans to be granted relative  
551 to the total amount of funding sought.

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552        4. The program administrator shall annually solicit  
553 proposals from local governments and nonprofit entities for  
554 projects that will reduce hurricane damage to homestead  
555 properties. The program administrator may provide up to 50  
556 percent of the funding for such projects. The projects may  
557 include educational programs, repair services, property  
558 inspections, and hurricane vulnerability analyses and such other  
559 projects as the program administrator determines to be  
560 consistent with the purposes of this section.

561        (5) ADVISORY COUNCIL.--There is created an advisory  
562 council to provide advice and assistance to the program  
563 administrator with regard to its administration of the  
564 endowment. The advisory council shall consist of:

565        (a) A representative of lending institutions, selected by  
566 the Financial Services Commission from a list of at least three  
567 persons recommended by the Florida Bankers Association.

568        (b) A representative of residential property insurers,  
569 selected by the Financial Services Commission from a list of at  
570 least three persons recommended by the Florida Insurance  
571 Council.

572        (c) A representative of home builders, selected by the  
573 Financial Services Commission from a list of at least three  
574 persons recommended by the Florida Home Builders Association.

575        (d) A faculty member of a state university selected by the  
576 Financial Services Commission who is an expert in hurricane-  
577 resistant construction methodologies and materials.

578        (e) Two members of the House of Representatives selected  
579 by the Speaker of the House of Representatives.

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580        (f) Two members of the Senate selected by the President of  
581 the Senate.

582        (g) The senior officer of the Florida Hurricane  
583 Catastrophe Fund.

584        (h) The executive director of Citizens Property Insurance  
585 Corporation.

586        (i) The director of the Division of Emergency Management  
587 of the Department of Community Affairs.

588  
589 Members appointed under paragraphs (a)-(d) shall serve at the  
590 pleasure of the Financial Services Commission. Members appointed  
591 under paragraphs (e) and (f) shall serve at the pleasure of the  
592 appointing officer. All other members shall serve ex officio.  
593 Members of the advisory council shall serve without compensation  
594 but may receive reimbursement as provided in s. 112.061 for per  
595 diem and travel expenses incurred in the performance of their  
596 official duties.

597        Section 3. Section 215.5586, Florida Statutes, is created  
598 to read:

599        215.5586 Florida Comprehensive Hurricane Damage Mitigation  
600 Program.--There is established within the Department of  
601 Financial Services the Florida Comprehensive Hurricane Damage  
602 Mitigation Program. The program shall be administered by an  
603 individual with prior executive experience in the private sector  
604 in the areas of insurance, business, or construction. The  
605 program shall develop and implement a comprehensive and  
606 coordinated approach for hurricane damage mitigation that shall  
607 include the following:

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CS(1) WIND CERTIFICATION AND HURRICANE MITIGATION

INSPECTIONS.--Free home-retrofit inspections of single-family site-built, owner-occupied, residential property shall be offered to determine what mitigation measures are needed and what improvements to existing residential properties are needed to reduce the property's vulnerability to hurricane damage. The Department of Financial Services shall establish a request for proposals to solicit proposals from wind certification entities to provide at no cost to homeowners wind certification and hurricane mitigation inspections. The inspections provided to homeowners, at a minimum, must include:

(a) A home inspection and report that summarizes the results and identifies corrective actions a homeowner may take to mitigate hurricane damage.

(b) A range of cost estimates regarding the mitigation features.

(c) Insurer-specific information regarding premium discounts correlated to recommended mitigation features identified by the inspection.

(d) A hurricane resistance rating scale specifying the home's current as well as projected wind resistance capabilities.

(2) GRANTS.--Financial grants shall be used to encourage single-family, site-built, owner-occupied, residential property owners to retrofit their properties to make them less vulnerable to hurricane damage. The program shall create a process in which mitigation contractors agree to participate and seek reimbursement from the state and homeowners select from a list

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636 of participating contractors. Matching fund grants shall also be  
637 made available to local governments and nonprofit entities for  
638 projects that will reduce hurricane damage to single-family,  
639 site-built, owner-occupied, residential property.

640 (3) LOANS.--Financial incentives shall be provided as  
641 authorized by s. 215.558.

642 (4) EDUCATION AND CONSUMER AWARENESS.--Multimedia public  
643 education, awareness, and advertising efforts designed to  
644 specifically address mitigation techniques shall be employed, as  
645 well as a component to support ongoing consumer resources and  
646 referral services.

647 (5) RULES.--The Department of Financial Services shall  
648 adopt rules pursuant to ss. 120.536(1) and 120.54 governing the  
649 Florida Comprehensive Hurricane Damage Mitigation Program.

650 Section 4. Section 252.63, Florida Statutes, is created to  
651 read:

652 252.63 Commissioner of Insurance Regulation; powers in a  
653 state of emergency.--

654 (1) It is the purpose and intent of this section to  
655 provide the Commissioner of Insurance Regulation the authority  
656 to temporarily modify or suspend provisions of the Florida  
657 Insurance Code in order to expedite the recovery of communities  
658 affected by a disaster or other emergency and encourage  
659 insurance companies, entities, and persons subject to the  
660 Florida Insurance Code and the jurisdiction of the office to  
661 meet the insurance needs of such communities.

662 (2) (a) When the Governor declares a state of emergency  
663 pursuant to s. 252.36, the commissioner may issue:

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664        1. One or more general orders applicable to all insurance  
665        companies, entities, and persons, as defined in s. 624.04, that  
666        are subject to the Florida Insurance Code and that serve any  
667        portion of the area of the state under the state of emergency;  
668        or

669        2. One or more specific orders to particular insurance  
670        companies, entities, and persons that are subject to the Florida  
671        Insurance Code, as defined in s. 624.01, which orders may modify  
672        or suspend, as to those companies, entities, and persons, all or  
673        any part of the Florida Insurance Code, or any applicable rule,  
674        consistent with the stated purposes of the Florida Insurance  
675        Code.

676        (b) An order issued by the commissioner under this section  
677        becomes effective upon issuance and continues for 120 days  
678        unless terminated sooner by the commissioner. The commissioner  
679        may extend an order for one additional period of 120 days if he  
680        or she determines that the emergency conditions that gave rise  
681        to the initial order still exist. By concurrent resolution, the  
682        Legislature may terminate any order issued under this section.

683        (3) The commissioner shall publish in the next available  
684        publication of the Florida Administrative Weekly a copy of the  
685        text of any order issued under this section, together with a  
686        statement describing the modification or suspension and  
687        explaining how the modification or suspension will facilitate  
688        recovery from the emergency.

689        Section 5. Subsections (1) and (2) of section 626.918,  
690        Florida Statutes, are amended to read:

691        626.918 Eligible surplus lines insurers.--

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692 (1) A ~~No~~ surplus lines agent may not ~~shall~~ place any  
693 coverage with any unauthorized insurer which is not then an  
694 eligible surplus lines insurer, except as permitted under  
695 subsections (5) and (6).

696 (2) An ~~No~~ unauthorized insurer may not ~~shall~~ be or become  
697 an eligible surplus lines insurer unless made eligible by the  
698 office in accordance with the following conditions:

699 (a) Eligibility of the insurer must be requested in  
700 writing by the Florida Surplus Lines Service Office.†

701 (b) The insurer must be currently an authorized insurer in  
702 the state or country of its domicile as to the kind or kinds of  
703 insurance proposed to be so placed and must have been such an  
704 insurer for not less than the 3 years next preceding or must be  
705 the wholly owned subsidiary of such authorized insurer or must  
706 be the wholly owned subsidiary of an already eligible surplus  
707 lines insurer as to the kind or kinds of insurance proposed for  
708 a period of not less than the 3 years next preceding. However,  
709 the office may waive the 3-year requirement if the insurer  
710 provides a product or service not readily available to the  
711 consumers of this state or has operated successfully for a  
712 period of at least 1 year next preceding and has capital and  
713 surplus of not less than \$25 million.†

714 (c) Before granting eligibility, the requesting surplus  
715 lines agent or the insurer shall furnish the office with a duly  
716 authenticated copy of its current annual financial statement in  
717 the English language and with all monetary values therein  
718 expressed in United States dollars, at an exchange rate (in the  
719 case of statements originally made in the currencies of other

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countries) then-current and shown in the statement, and with such additional information relative to the insurer as the office may request.

(d)1.a. The insurer must have and maintain surplus as to policyholders of not less than \$15 million; in addition, an alien insurer must also have and maintain in the United States a trust fund for the protection of all its policyholders in the United States under terms deemed by the office to be reasonably adequate, in an amount not less than \$5.4 million. Any such surplus as to policyholders or trust fund shall be represented by investments consisting of eligible investments for like funds of like domestic insurers under part II of chapter 625 provided, however, that in the case of an alien insurance company, any such surplus as to policyholders may be represented by investments permitted by the domestic regulator of such alien insurance company if such investments are substantially similar in terms of quality, liquidity, and security to eligible investments for like funds of like domestic insurers under part II of chapter 625. Clean, irrevocable, unconditional, and evergreen letters of credit issued or confirmed by a qualified United States financial institution, as defined in subparagraph 2., may be used to fund the trust.

b.2. For those surplus lines insurers that were eligible on January 1, 1994, and that maintained their eligibility thereafter, the required surplus as to policyholders shall be:

(I)a. On December 31, 1994, and until December 30, 1995, \$2.5 million.

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747        (II)~~b.~~ On December 31, 1995, and until December 30, 1996,  
748        \$3.5 million.  
749        (III)~~e.~~ On December 31, 1996, and until December 30, 1997,  
750        \$4.5 million.  
751        (IV)~~d.~~ On December 31, 1997, and until December 30, 1998,  
752        \$5.5 million.  
753        (V)~~e.~~ On December 31, 1998, and until December 30, 1999,  
754        \$6.5 million.  
755        (VI)~~f.~~ On December 31, 1999, and until December 30, 2000,  
756        \$8 million.  
757        (VII)~~g.~~ On December 31, 2000, and until December 30, 2001,  
758        \$9.5 million.  
759        (VIII)~~h.~~ On December 31, 2001, and until December 30,  
760        2002, \$11 million.  
761        (IX)~~i.~~ On December 31, 2002, and until December 30, 2003,  
762        \$13 million.  
763        (X)~~j.~~ On December 31, 2003, and thereafter, \$15 million.  
764        c.3. The capital and surplus requirements as set forth in  
765        sub-subparagraph b. ~~subparagraph 2.~~ do not apply in the case of  
766        an insurance exchange created by the laws of individual states,  
767        where the exchange maintains capital and surplus pursuant to the  
768        requirements of that state, or maintains capital and surplus in  
769        an amount not less than \$50 million in the aggregate. For an  
770        insurance exchange which maintains funds in the amount of at  
771        least \$12 million for the protection of all insurance exchange  
772        policyholders, each individual syndicate shall maintain minimum  
773        capital and surplus in an amount not less than \$3 million. If  
774        the insurance exchange does not maintain funds in the amount of

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at least \$12 million for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements set forth in sub-subparagraph b. ~~subparagraph 2.~~

d.4. A surplus lines insurer which is a member of an insurance holding company that includes a member which is a Florida domestic insurer as set forth in its holding company registration statement, as set forth in s. 628.801 and rules adopted thereunder, may elect to maintain surplus as to policyholders in an amount equal to the requirements of s. 624.408, subject to the requirement that the surplus lines insurer shall at all times be in compliance with the requirements of chapter 625.

The election shall be submitted to the office and shall be effective upon the office's being satisfied that the requirements of sub-subparagraph d. ~~subparagraph 4.~~ have been met. The initial date of election shall be the date of office approval. The election approval application shall be on a form adopted by commission rule. The office may approve an election form submitted pursuant to sub-subparagraph d. ~~subparagraph 4.~~ only if it was on file with the former Department of Insurance before February 28, 1998.

2. For purposes of letters of credit under subparagraph 1., the term "qualified United States financial institution" means an institution that:

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801        a. Is organized or, in the case of a United States office  
802 of a foreign banking organization, is licensed under the laws of  
803 the United States or any state.

804        b. Is regulated, supervised, and examined by authorities  
805 of the United States or any state having regulatory authority  
806 over banks and trust companies.

807        c. Has been determined by the office or the Securities  
808 Valuation Office of the National Association of Insurance  
809 Commissioners to meet such standards of financial condition and  
810 standing as are considered necessary and appropriate to regulate  
811 the quality of financial institutions whose letters of credit  
812 are acceptable to the office.

813        (e) The insurer must be of good reputation as to the  
814 providing of service to its policyholders and the payment of  
815 losses and claims.†

816        (f) The insurer must be eligible, as for authority to  
817 transact insurance in this state, under s. 624.404(3).†—and

818        (g) This subsection does not apply as to unauthorized  
819 insurers made eligible under s. 626.917 as to wet marine and  
820 aviation risks.

821        Section 6. Paragraph (j) is added to subsection (2) of  
822 section 627.062, Florida Statutes, and subsections (9) and (10)  
823 are added to that section, to read:

824        627.062 Rate standards.--

825        (2) As to all such classes of insurance:

826        (j) Effective January 1, 2007, notwithstanding any other  
827 provision of this section:

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1. With respect to any residential property insurance subject to regulation under this section, a rate filing, including, but not limited to, any rate changes, rating factors, territories, classification, discounts, and credits, with respect to any policy form, including endorsements issued with the form, that results in an overall average statewide premium increase or decrease of no more than 5 percent above or below the premium that would result from the insurer's rates then in effect shall not be subject to a determination by the office that the rate is excessive or unfairly discriminatory except as provided in subparagraph 3., or any other provision of law, provided all changes specified in the filing do not result in an overall premium increase of more than 10 percent for any one territory, for reasons related solely to the rate change. As used in this subparagraph, the term "insurer's rates then in effect" includes only rates that have been lawfully in effect under this section or rates that have been determined to be lawful through administrative proceedings or judicial proceedings.

2. An insurer may not make filings under this paragraph with respect to any policy form, including endorsements issued with the form, if the overall premium changes resulting from such filings exceed the amounts specified in this paragraph in any 12-month period. An insurer may proceed under other provisions of this section or other provisions of law if the insurer seeks to exceed the premium or rate limitations of this paragraph.

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855        3. This paragraph does not affect the authority of the  
856 office to disapprove a rate as inadequate or to disapprove a  
857 filing for the unlawful use of unfairly discriminatory rating  
858 factors that are prohibited by the laws of this state. An  
859 insurer electing to implement a rate change under this paragraph  
860 shall submit a filing to the office at least 30 days prior to  
861 the effective date of the rate change. The office shall have 30  
862 days after the filing's submission to review the filing and  
863 determine if the rate is inadequate or uses unfairly  
864 discriminatory rating factors. Absent a finding by the office  
865 within such 30-day period that the rate is inadequate or that  
866 the insurer has used unfairly discriminatory rating factors, the  
867 filing is deemed approved. If the office finds during the 30-day  
868 period that the filing will result in inadequate premiums or  
869 otherwise endanger the insurer's solvency, the office shall  
870 suspend the rate decrease. If the insurer is implementing an  
871 overall rate increase, the results of which continue to produce  
872 an inadequate rate, such increase shall proceed pending  
873 additional action by the office to ensure the adequacy of the  
874 rate.

875        4. This paragraph does not apply to rate filings for any  
876 insurance other than residential property insurance.

877  
878 The provisions of this subsection shall not apply to workers'  
879 compensation and employer's liability insurance and to motor  
880 vehicle insurance.

881        (9) Notwithstanding any other provision of this section,  
882 any rate filing or applicable portion of the rate filing that

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includes the peril of wind in the high-risk account of the Citizens Property Insurance Corporation shall be deemed approved upon submission to the office if the filing or the applicable portion of the filing requests approval of a rate that is less than the approved rate for similar risks insured in the high-risk account of the corporation unless the office determines that such rate is inadequate or unfairly discriminatory as provided in subsection (2).

(10)(a) Beginning January 1, 2007, the office shall annually provide a report to the President of the Senate, the Speaker of the House of Representatives, the minority party leader of each house of the Legislature, and the chairs of the standing committees of each house of the Legislature having jurisdiction over insurance issues, specifying the impact of flexible rate regulation under paragraph (2)(j) on the degree of competition in insurance markets in this state.

(b) The report shall include a year-by-year comparison of the number of companies participating in the market for each class of insurance and the relative rate levels. The report shall also specify:

1. The number of rate filings made under paragraph (2)(j), the rate levels under those filings, and the market share affected by those filings.

2. The number of filings made on a file and use basis, the rate levels under those filings, and the market share affected by those filings.

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3. The number of filings made on a use and file basis, the rate levels under those filings, and the market share affected by those filings.

4. Recommendations to promote competition in the insurance market and further protect insurance consumers.

Section 7. Paragraph (c) of subsection (3) of section 627.0628, Florida Statutes, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.--

(3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.--

(c) With respect to a rate filing under s. 627.062, an insurer may employ actuarial methods, principles, standards, models, or output ranges found by the commission to be accurate or reliable to determine hurricane loss factors for use in a rate filing under s. 627.062. Such findings and factors are admissible and relevant in consideration of a rate filing by the office or in any arbitration or administrative or judicial review only if the office and the consumer advocate appointed pursuant to s. 627.0613 have a reasonable opportunity to review ~~access to~~ all of the basic assumptions and factors that were used in developing the actuarial methods, principles, standards, models, or output ranges. After review of the specific models by the commission, the office and the consumer advocate may not pose any questions generated from their respective reviews that duplicate or compromise the conclusions of the commission relative to the accuracy or reliability of the models in producing hurricane loss factors for use in a rate filing under



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937 ~~s. 627.062, and are not precluded from disclosing such~~  
938 ~~information in a rate proceeding.~~

939       Section 8.   Section 627.06281, Florida Statutes, is amended  
940 to read:

941       627.06281   Public hurricane loss projection model;  
942 reporting of data by insurers.--

943       (1)   Within 30 days after a written request for loss data  
944 and associated exposure data by the office or a type I center  
945 within the State University System established to study  
946 mitigation, residential property insurers and licensed rating  
947 and advisory organizations that compile residential property  
948 insurance loss data shall provide loss data and associated  
949 exposure data for residential property insurance policies to the  
950 office or to a type I center within the State University System  
951 established to study mitigation, as directed by the office, for  
952 the purposes of developing, maintaining, and updating a public  
953 model for hurricane loss projections. The loss data and  
954 associated exposure data provided shall be in writing.

955       (2)   The office may not use the public model for hurricane  
956 loss projection referred to in subsection (1) for any purpose  
957 under s. 627.062 or s. 627.351 until the model has been  
958 submitted to the Florida Commission on Hurricane Loss Projection  
959 Methodology for review under s. 627.0628 and the commission has  
960 found the model to be accurate and reliable pursuant to the same  
961 process and standards as the commission uses for the review of  
962 other hurricane loss projection models.

963       Section 9.   Subsection (6) of section 627.351, Florida  
964 Statutes, is amended to read:

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965           627.351 Insurance risk apportionment plans.--  
966           (6) CITIZENS PROPERTY INSURANCE CORPORATION.--  
967           (a)1.a. The Legislature finds that actual and threatened  
968 catastrophic losses to property in this state from hurricanes  
969 have caused insurers to be unwilling or unable to provide  
970 property insurance coverage to the extent sought and needed. It  
971 is in the public interest and a public purpose to assist in  
972 ensuring ~~assuring~~ that homestead property in the state is  
973 insured so as to facilitate the remediation, reconstruction, and  
974 replacement of damaged or destroyed property in order to reduce  
975 or avoid the negative effects otherwise resulting to the public  
976 health, safety, and welfare; to the economy of the state; and to  
977 the revenues of the state and local governments needed to  
978 provide for the public welfare. It is necessary, therefore, to  
979 provide property insurance to applicants who are in good faith  
980 entitled to procure insurance through the voluntary market but  
981 are unable to do so. The Legislature intends by this subsection  
982 that property insurance be provided and that it continues, as  
983 long as necessary, through an entity organized to achieve  
984 efficiencies and economies, while providing service to  
985 policyholders, applicants, and agents that is no less than the  
986 quality generally provided in the voluntary market, all toward  
987 the achievement of the foregoing public purposes. Because it is  
988 essential for the corporation to have the maximum financial  
989 resources to pay claims following a catastrophic hurricane, it  
990 is the intent of the Legislature that the income of the  
991 corporation be exempt from federal income taxation and that

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interest on the debt obligations issued by the corporation be exempt from federal income taxation.

b. The Legislature finds and declares that:

(I) The commitment of the state, as expressed in subparagraph a., to providing a means of ensuring the availability of property insurance through a residual market mechanism is hereby reaffirmed.

(II) Despite legislative efforts to ensure that the residual market for property insurance is self-supporting to the greatest reasonable extent, residual market policyholders are to some degree subsidized by the general public through assessments on owners of property insured in the voluntary market and their insurers and through the potential use of general revenues of the state to eliminate or reduce residual market deficits.

(III) The degree of such subsidy is a matter of public policy. It is the intent of the Legislature to better control the subsidy through at least the following means:

(A) Restructuring the residual market mechanism to provide separate treatment of homestead and nonhomestead properties, with the intent of continuing to provide an insurance program with limited subsidies for homestead properties while providing a nonsubsidized insurance program for nonhomestead properties.

(B) Redefining the concept of rate adequacy in the subsidized residual market with the intent of ensuring a rate structure that will enable the subsidized residual market to be self-supporting except in the event of hurricane losses of a legislatively specified magnitude. It is the intent of the Legislature that the funding of the subsidized residual market

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1020 be structured to be self-supporting up to the point of its 100-  
1021 year probable maximum loss and that the funding be structured to  
1022 make reliance on assessments or other sources of public funding  
1023 necessary only in the event of a 100-year probable maximum loss  
1024 or larger loss.

1025       2. The Residential Property and Casualty Joint  
1026 Underwriting Association originally created by this statute  
1027 shall be known, as of July 1, 2002, as the Citizens Property  
1028 Insurance Corporation. The corporation shall provide insurance  
1029 for homesteaded residential property and may provide insurance  
1030 for residential and commercial property, for applicants who are  
1031 in good faith entitled, but are unable, to procure insurance  
1032 through the voluntary market. The corporation shall operate  
1033 pursuant to a plan of operation approved by order of the office.  
1034 The plan is subject to continuous review by the office. The  
1035 office may, by order, withdraw approval of all or part of a plan  
1036 if the office determines that conditions have changed since  
1037 approval was granted and that the purposes of the plan require  
1038 changes in the plan. For the purposes of this subsection,  
1039 residential coverage includes both personal lines residential  
1040 coverage, which consists of the type of coverage provided by  
1041 homeowner's, mobile home owner's, dwelling, tenant's,  
1042 condominium unit owner's, and similar policies, and commercial  
1043 lines residential coverage, which consists of the type of  
1044 coverage provided by condominium association, apartment  
1045 building, and similar policies.

1046       3. It is the intent of the Legislature that policyholders,  
1047 applicants, and agents of the corporation receive service and

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1048 treatment of the highest possible level but never less than that  
1049 generally provided in the voluntary market. It also is intended  
1050 that the corporation be held to service standards no less than  
1051 those applied to insurers in the voluntary market by the office  
1052 with respect to responsiveness, timeliness, customer courtesy,  
1053 and overall dealings with policyholders, applicants, or agents  
1054 of the corporation.

1055       (b)1. All insurers authorized to write one or more subject  
1056 lines of business in this state are subject to assessment by the  
1057 corporation and, for the purposes of this subsection, are  
1058 referred to collectively as "assessable insurers." Insurers  
1059 writing one or more subject lines of business in this state  
1060 pursuant to part VIII of chapter 626 are not assessable  
1061 insurers, but insureds who procure one or more subject lines of  
1062 business in this state pursuant to part VIII of chapter 626 are  
1063 subject to assessment by the corporation and are referred to  
1064 collectively as "assessable insureds." An authorized insurer's  
1065 assessment liability shall begin on the first day of the  
1066 calendar year following the year in which the insurer was issued  
1067 a certificate of authority to transact insurance for subject  
1068 lines of business in this state and shall terminate 1 year after  
1069 the end of the first calendar year during which the insurer no  
1070 longer holds a certificate of authority to transact insurance  
1071 for subject lines of business in this state.

1072       2.a. All revenues, assets, liabilities, losses, and  
1073 expenses of the corporation shall be divided into four ~~three~~  
1074 separate accounts as follows:

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(I) Three separate homestead accounts that may provide coverage only for homestead properties. The term "homestead property" means a residential property that has been granted a homestead exemption under chapter 196. The term also includes a property that is qualified for such exemption but has not applied for the exemption as of the date of issuance of the policy, provided the policyholder obtains the exemption within 1 year after initial issuance of the policy. The term also includes an owner-occupied mobile or manufactured home as defined in s. 320.01 permanently affixed to real property regardless of whether the owner of the mobile or manufactured home is also the owner of the land on which the mobile or manufactured home is permanently affixed. However, the term does not include a mobile home that is being held for display by a licensed mobile home dealer or a licensed mobile home manufacturer and is not owner-occupied. For the purposes of this sub-sub-subparagraph, the term "homestead property" also includes property covered by tenant's insurance and commercial lines residential policies. The accounts providing coverage only for homestead properties are:

(A) ~~(I)~~ A personal lines account for personal residential policies issued by the corporation or issued by the Residential Property and Casualty Joint Underwriting Association and renewed by the corporation that provide comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage in the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for such

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1102 policies that do not provide coverage for the peril of wind on  
1103 risks that are located in such areas;

1104 (B)~~(II)~~ A commercial lines account for commercial  
1105 residential policies issued by the corporation or issued by the  
1106 Residential Property and Casualty Joint Underwriting Association  
1107 and renewed by the corporation that provide coverage for basic  
1108 property perils on risks that are not located in areas eligible  
1109 for coverage in the Florida Windstorm Underwriting Association  
1110 as those areas were defined on January 1, 2002, and for such  
1111 policies that do not provide coverage for the peril of wind on  
1112 risks that are located in such areas; and

1113 (C)~~(III)~~ A high-risk account for personal residential  
1114 policies and commercial residential ~~and commercial~~  
1115 ~~nonresidential~~ property policies issued by the corporation or  
1116 transferred to the corporation that provide coverage for the  
1117 peril of wind on risks that are located in areas eligible for  
1118 coverage in the Florida Windstorm Underwriting Association as  
1119 those areas were defined on January 1, 2002. The high-risk  
1120 account must also include quota share primary insurance under  
1121 subparagraph (c)2. The area eligible for coverage under the  
1122 high-risk account also includes the area within Port Canaveral,  
1123 which is bordered on the south by the City of Cape Canaveral,  
1124 bordered on the west by the Banana River, and bordered on the  
1125 north by Federal Government property. The office may remove  
1126 territory from the area eligible for wind-only and quota share  
1127 coverage if, after a public hearing, the office finds that  
1128 authorized insurers in the voluntary market are willing and able  
1129 to write sufficient amounts of personal and commercial

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1130 residential coverage for all perils in the territory, including  
1131 coverage for the peril of wind, such that risks covered by wind-  
1132 only policies in the removed territory could be issued a policy  
1133 by the corporation in either the personal lines or commercial  
1134 lines account without a significant increase in the  
1135 corporation's probable maximum loss in such account. Removal of  
1136 territory from the area eligible for wind-only or quota share  
1137 coverage does not alter the assignment of wind coverage written  
1138 in such areas to the high-risk account.

1139 (II) (A) A separate nonhomestead account for all properties  
1140 that otherwise meet all of the criteria for eligibility for  
1141 coverage within one of the three homestead accounts described in  
1142 sub-sub-subparagraph (I) but that do not meet the definition of  
1143 homestead property specified in sub-sub-subparagraph (I). The  
1144 nonhomestead account shall provide the same types of coverage as  
1145 are provided by the three homestead accounts, including wind-  
1146 only coverage in the high-risk account area. In order to be  
1147 eligible for coverage in the nonhomestead account, at the  
1148 initial issuance of the policy and at renewal the property owner  
1149 shall provide the corporation with a sworn affidavit stating  
1150 that the property has been rejected for coverage by at least  
1151 three authorized insurers and at least three surplus lines  
1152 insurers.

1153 (B) An authorized insurer may provide coverage to a  
1154 nonhomestead property owner on an individual risk rate basis.  
1155 Rates and forms of an authorized insurer for nonhomestead  
1156 properties are not subject to ss. 627.062 and 627.0629, except  
1157 s. 627.0629(2)(b). Such rates and forms are subject to all other



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1158 applicable provisions of this code and rules adopted under this  
1159 code. During the course of an insurer's market conduct  
1160 examination, the office may review the rate for any nonhomestead  
1161 property to determine if such rate is inadequate or unfairly  
1162 discriminatory. Rates on nonhomestead property may be found  
1163 inadequate by the office if they are clearly insufficient,  
1164 together with the investment income attributable to the insurer,  
1165 to sustain projected losses and expenses in the class of  
1166 business to which such rates apply. Rates on nonhomestead  
1167 property may also be found inadequate as to the premium charged  
1168 to a risk or group of risks if discounts or credits are allowed  
1169 that exceed a reasonable reflection of expense savings and  
1170 reasonably expected loss experience from the risk or group of  
1171 risks. Rates on nonhomestead property may be found to be  
1172 unfairly discriminatory as to a risk or group of risks by the  
1173 office if the application of premium discounts, credits, or  
1174 surcharges among such risks does not bear a reasonable  
1175 relationship to the expected loss and expense experience among  
1176 the various risks. A rating plan, including discounts, credits,  
1177 or surcharges on nonhomestead property, may also be found to be  
1178 unfairly discriminatory if the plan fails to clearly and  
1179 equitably reflect consideration of the policyholder's  
1180 participation in a risk management program adjusted pursuant to  
1181 s. 627.0625. The office may order an insurer to discontinue  
1182 using a rate for new policies or upon renewal of a policy if the  
1183 office finds the rate to be inadequate or unfairly  
1184 discriminatory. Insurers shall maintain records and  
1185 documentation relating to rates and forms subject to this sub-

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1186   sub-sub-subparagraph for a period of at least 5 years after the  
1187   effective date of the policy.

1188       b.   The three separate homestead accounts must be  
1189   maintained as long as financing obligations entered into by the  
1190   Florida Windstorm Underwriting Association or Residential  
1191   Property and Casualty Joint Underwriting Association are  
1192   outstanding, in accordance with the terms of the corresponding  
1193   financing documents. When the financing obligations are no  
1194   longer outstanding, in accordance with the terms of the  
1195   corresponding financing documents, the corporation may use a  
1196   single homestead account for all revenues, assets, liabilities,  
1197   losses, and expenses of the corporation. All revenues, assets,  
1198   liabilities, losses, and expenses attributable to the  
1199   nonhomestead account shall be maintained separately.

1200       c.   Creditors of the Residential Property and Casualty  
1201   Joint Underwriting Association shall have a claim against, and  
1202   recourse to, the accounts referred to in sub-sub-sub-  
1203   subparagraphs ~~sub-sub-subparagraphs~~ a. (I) (A) and (B) ~~(II)~~ and  
1204   shall have no claim against, or recourse to, the account  
1205   referred to in sub-sub-sub-subparagraph ~~sub-sub-subparagraph~~  
1206   a. (I) (C) ~~(III)~~. Creditors of the Florida Windstorm Underwriting  
1207   Association shall have a claim against, and recourse to, the  
1208   account referred to in sub-sub-sub-subparagraph ~~sub-sub-~~  
1209   subparagraph a. (I) (C) ~~(III)~~ and shall have no claim against, or  
1210   recourse to, the accounts referred to in sub-sub-sub-  
1211   subparagraphs ~~sub-sub-subparagraphs~~ a. (I) (A) and (B) ~~(II)~~.

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1212           d. Revenues, assets, liabilities, losses, and expenses not  
1213 attributable to particular accounts shall be prorated among the  
1214 accounts.

1215           e. The Legislature finds that the revenues of the  
1216 corporation are revenues that are necessary to meet the  
1217 requirements set forth in documents authorizing the issuance of  
1218 bonds under this subsection.

1219           f. No part of the income of the corporation may inure to  
1220 the benefit of any private person.

1221           3. With respect to a deficit in any of the homestead  
1222 accounts ~~an account~~:

1223           a. When the deficit incurred in a particular calendar year  
1224 is not greater than 10 percent of the aggregate statewide direct  
1225 written premium for the subject lines of business for the prior  
1226 calendar year, the entire deficit shall be recovered through  
1227 regular assessments of assessable insurers under paragraph (g)  
1228 and assessable insureds.

1229           b. When the deficit incurred in a particular calendar year  
1230 exceeds 10 percent of the aggregate statewide direct written  
1231 premium for the subject lines of business for the prior calendar  
1232 year, the corporation shall levy regular assessments on  
1233 assessable insurers under paragraph (g) and on assessable  
1234 insureds in an amount equal to the greater of 10 percent of the  
1235 deficit or 10 percent of the aggregate statewide direct written  
1236 premium for the subject lines of business for the prior calendar  
1237 year. Any remaining deficit shall be recovered through emergency  
1238 assessments under sub-subparagraph d.

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1239 c. Each assessable insurer's share of the amount being  
1240 assessed under sub-subparagraph a. or sub-subparagraph b. shall  
1241 be in the proportion that the assessable insurer's direct  
1242 written premium for the subject lines of business for the year  
1243 preceding the year in which the deficit is incurred ~~assessment~~  
1244 bears to the aggregate statewide direct written premium for the  
1245 subject lines of business for that year. The assessment  
1246 percentage applicable to each assessable insured is the ratio of  
1247 the amount being assessed under sub-subparagraph a. or sub-  
1248 subparagraph b. to the aggregate statewide direct written  
1249 premium for the subject lines of business for the prior year.  
1250 Assessments levied by the corporation on assessable insurers  
1251 under sub-subparagraphs a. and b. shall be paid as required by  
1252 the corporation's plan of operation and paragraph (g).  
1253 Notwithstanding any other provision in this subsection, the  
1254 aggregate amount of a regular assessment levied in connection  
1255 with a deficit incurred in a particular calendar year shall be  
1256 reduced by the aggregate amount of the Citizens Property  
1257 Insurance Corporation policyholder surcharge imposed under  
1258 subparagraph (c)10. Assessments levied by the corporation on  
1259 assessable insureds under sub-subparagraphs a. and b. shall be  
1260 collected by the surplus lines agent at the time the surplus  
1261 lines agent collects the surplus lines tax required by s.  
1262 626.932 and shall be paid to the Florida Surplus Lines Service  
1263 Office at the time the surplus lines agent pays the surplus  
1264 lines tax to the Florida Surplus Lines Service Office. Upon  
1265 receipt of regular assessments from surplus lines agents, the  
1266 Florida Surplus Lines Service Office shall transfer the

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1267 assessments directly to the corporation as determined by the  
1268 corporation.

1269       d. Upon a determination by the board of governors that a  
1270 deficit in an account exceeds the amount that will be recovered  
1271 through regular assessments under sub-subparagraph a. or sub-  
1272 subparagraph b., the board shall levy, after verification by the  
1273 office, emergency assessments, for as many years as necessary to  
1274 cover the deficits, to be collected by assessable insurers and  
1275 the corporation and collected from assessable insureds upon  
1276 issuance or renewal of policies for subject lines of business,  
1277 excluding National Flood Insurance policies. The amount of the  
1278 emergency assessment collected in a particular year shall be a  
1279 uniform percentage of that year's direct written premium for  
1280 subject lines of business and all accounts of the corporation,  
1281 excluding National Flood Insurance Program policy premiums, as  
1282 annually determined by the board and verified by the office. The  
1283 office shall verify the arithmetic calculations involved in the  
1284 board's determination within 30 days after receipt of the  
1285 information on which the determination was based.

1286 Notwithstanding any other provision of law, the corporation and  
1287 each assessable insurer that writes subject lines of business  
1288 shall collect emergency assessments from its policyholders  
1289 without such obligation being affected by any credit,  
1290 limitation, exemption, or deferment. Emergency assessments  
1291 levied by the corporation on assessable insureds shall be  
1292 collected by the surplus lines agent at the time the surplus  
1293 lines agent collects the surplus lines tax required by s.  
1294 626.932 and shall be paid to the Florida Surplus Lines Service

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1295 Office at the time the surplus lines agent pays the surplus  
1296 lines tax to the Florida Surplus Lines Service Office. The  
1297 emergency assessments so collected shall be transferred directly  
1298 to the corporation on a periodic basis as determined by the  
1299 corporation and shall be held by the corporation solely in the  
1300 applicable account. The aggregate amount of emergency  
1301 assessments levied for an account under this sub-subparagraph in  
1302 any calendar year may not exceed the greater of 10 percent of  
1303 the amount needed to cover the original deficit, plus interest,  
1304 fees, commissions, required reserves, and other costs associated  
1305 with financing of the original deficit, or 10 percent of the  
1306 aggregate statewide direct written premium for subject lines of  
1307 business and for all accounts of the corporation for the prior  
1308 year, plus interest, fees, commissions, required reserves, and  
1309 other costs associated with financing the original deficit.

1310       e. The corporation may pledge the proceeds of assessments,  
1311 projected recoveries from the Florida Hurricane Catastrophe  
1312 Fund, other insurance and reinsurance recoverables, Citizens  
1313 policyholder ~~market equalization~~ surcharges and other  
1314 surcharges, and other funds available to the corporation as the  
1315 source of revenue for and to secure bonds issued under paragraph  
1316 (g), bonds or other indebtedness issued under subparagraph  
1317 (c)3., or lines of credit or other financing mechanisms issued  
1318 or created under this subsection, or to retire any other debt  
1319 incurred as a result of deficits or events giving rise to  
1320 deficits, or in any other way that the board determines will  
1321 efficiently recover such deficits. The purpose of the lines of  
1322 credit or other financing mechanisms is to provide additional

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1323 resources to assist the corporation in covering claims and  
1324 expenses attributable to a catastrophe. As used in this  
1325 subsection, the term "assessments" includes regular assessments  
1326 under sub-subparagraph a., sub-subparagraph b., or subparagraph  
1327 (g)1. and emergency assessments under sub-subparagraph d.  
1328 Emergency assessments collected under sub-subparagraph d. are  
1329 not part of an insurer's rates, are not premium, and are not  
1330 subject to premium tax, fees, or commissions; however, failure  
1331 to pay the emergency assessment shall be treated as failure to  
1332 pay premium. The emergency assessments under sub-subparagraph d.  
1333 shall continue as long as any bonds issued or other indebtedness  
1334 incurred with respect to a deficit for which the assessment was  
1335 imposed remain outstanding, unless adequate provision has been  
1336 made for the payment of such bonds or other indebtedness  
1337 pursuant to the documents governing such bonds or other  
1338 indebtedness.

1339       f. As used in this subsection, the term "subject lines of  
1340 business" means insurance written by assessable insurers or  
1341 procured by assessable insureds on real or personal property, as  
1342 defined in s. 624.604, including insurance for fire, industrial  
1343 fire, allied lines, farmowners multiperil, homeowners  
1344 multiperil, commercial multiperil, and mobile homes, and  
1345 including liability coverage on all such insurance, but  
1346 excluding inland marine as defined in s. 624.607(3) and  
1347 excluding vehicle insurance as defined in s. 624.605(1) other  
1348 than insurance on mobile homes used as permanent dwellings.

1349       g. The Florida Surplus Lines Service Office shall  
1350 determine annually the aggregate statewide written premium in

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subject lines of business procured by assessable insureds and shall report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.

h. The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for regular assessments and emergency assessments levied under this subparagraph on assessable insureds and shall assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.

4. With respect to a deficit in the nonhomestead account or to any cash flow shortfall that the board determines will create an inability for the nonhomestead account to pay claims when due:

a. The board shall levy an immediate assessment against the premium of each nonhomestead account policyholder, expressed as a uniform percentage of the premium for the policy then in effect. The maximum amount of such assessment is 100 percent of such premium.

b. If the assessment under sub-subparagraph a. is insufficient to enable the account to pay claims and eliminate the deficit in the account, the board may levy an additional assessment to be collected at the time of any issuance or renewal of a nonhomestead account policy during the 1-year period following the levy of the assessment under sub-subparagraph a., expressed as a uniform percentage of the



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1379 premium for the policy for the forthcoming policy period. The  
1380 maximum amount of such assessment is 100 percent of such  
1381 premium.

1382 c. If the assessments under sub-subparagraphs a. and b.  
1383 are insufficient to enable the account to pay claims and  
1384 eliminate the deficit in the account, the board may make a loan  
1385 from any of the homestead accounts to the nonhomestead account,  
1386 subject to approval by the office and provided that such loan  
1387 does not impair the financial status of any of the homestead  
1388 accounts.

1389 5. A policyholder in a nonhomestead account who has not  
1390 paid a deficit assessment levied by the corporation shall be  
1391 ineligible for coverage by a surplus lines insurer or authorized  
1392 insurer.

1393 (c) The plan of operation of the corporation:

1394 1. Must provide for adoption of residential property and  
1395 casualty insurance policy forms, rates, and underwriting rules  
1396 and commercial residential and nonresidential property insurance  
1397 forms, rates, and underwriting rules which ~~forms~~ must be  
1398 approved by the office prior to use. The corporation shall adopt  
1399 the following policy forms:

1400 a. Standard personal lines policy forms that are  
1401 comprehensive multiperil policies providing full coverage of a  
1402 residential property equivalent to the coverage provided in the  
1403 private insurance market under an HO-3, HO-4, or HO-6 policy.

1404 b. Basic personal lines policy forms that are policies  
1405 similar to an HO-8 policy or a dwelling fire policy that provide  
1406 coverage meeting the requirements of the secondary mortgage

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1407 market, but which coverage is more limited than the coverage  
1408 under a standard policy.

1409       c. Commercial lines residential policy forms that are  
1410 generally similar to the basic perils of full coverage  
1411 obtainable for commercial residential structures in the admitted  
1412 voluntary market.

1413       d. Personal lines and commercial lines residential  
1414 property insurance forms that cover the peril of wind only. The  
1415 forms are applicable only to residential properties located in  
1416 areas eligible for coverage under the high-risk account referred  
1417 to in sub-subparagraph (b)2.a.

1418       e. Commercial lines nonresidential property insurance  
1419 forms that cover the peril of wind only. The forms are  
1420 applicable only to nonresidential properties located in areas  
1421 eligible for coverage under the high-risk account referred to in  
1422 sub-subparagraph (b)2.a.

1423       f. The corporation may adopt variations of the policy  
1424 forms listed in sub-subparagraphs a.-e. that contain more  
1425 restrictive coverage.

1426       2.a. Must provide that the corporation adopt a program in  
1427 which the corporation and authorized insurers enter into quota  
1428 share primary insurance agreements for hurricane coverage, as  
1429 defined in s. 627.4025(2)(a), for eligible risks, and adopt  
1430 property insurance forms for eligible risks which cover the  
1431 peril of wind only. As used in this subsection, the term:

1432       (I) "Quota share primary insurance" means an arrangement  
1433 in which the primary hurricane coverage of an eligible risk is  
1434 provided in specified percentages by the corporation and an

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1435 authorized insurer. The corporation and authorized insurer are  
1436 each solely responsible for a specified percentage of hurricane  
1437 coverage of an eligible risk as set forth in a quota share  
1438 primary insurance agreement between the corporation and an  
1439 authorized insurer and the insurance contract. The  
1440 responsibility of the corporation or authorized insurer to pay  
1441 its specified percentage of hurricane losses of an eligible  
1442 risk, as set forth in the quota share primary insurance  
1443 agreement, may not be altered by the inability of the other  
1444 party to the agreement to pay its specified percentage of  
1445 hurricane losses. Eligible risks that are provided hurricane  
1446 coverage through a quota share primary insurance arrangement  
1447 must be provided policy forms that set forth the obligations of  
1448 the corporation and authorized insurer under the arrangement,  
1449 clearly specify the percentages of quota share primary insurance  
1450 provided by the corporation and authorized insurer, and  
1451 conspicuously and clearly state that neither the authorized  
1452 insurer nor the corporation may be held responsible beyond its  
1453 specified percentage of coverage of hurricane losses.

1454 (II) "Eligible risks" means personal lines residential and  
1455 commercial lines residential risks that meet the underwriting  
1456 criteria of the corporation and are located in areas that were  
1457 eligible for coverage by the Florida Windstorm Underwriting  
1458 Association on January 1, 2002.

1459 b. The corporation may enter into quota share primary  
1460 insurance agreements with authorized insurers at corporation  
1461 coverage levels of 90 percent and 50 percent.

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1462 c. If the corporation determines that additional coverage  
1463 levels are necessary to maximize participation in quota share  
1464 primary insurance agreements by authorized insurers, the  
1465 corporation may establish additional coverage levels. However,  
1466 the corporation's quota share primary insurance coverage level  
1467 may not exceed 90 percent.

1468 d. Any quota share primary insurance agreement entered  
1469 into between an authorized insurer and the corporation must  
1470 provide for a uniform specified percentage of coverage of  
1471 hurricane losses, by county or territory as set forth by the  
1472 corporation board, for all eligible risks of the authorized  
1473 insurer covered under the quota share primary insurance  
1474 agreement.

1475 e. Any quota share primary insurance agreement entered  
1476 into between an authorized insurer and the corporation is  
1477 subject to review and approval by the office. However, such  
1478 agreement shall be authorized only as to insurance contracts  
1479 entered into between an authorized insurer and an insured who is  
1480 already insured by the corporation for wind coverage.

1481 f. For all eligible risks covered under quota share  
1482 primary insurance agreements, the exposure and coverage levels  
1483 for both the corporation and authorized insurers shall be  
1484 reported by the corporation to the Florida Hurricane Catastrophe  
1485 Fund. For all policies of eligible risks covered under quota  
1486 share primary insurance agreements, the corporation and the  
1487 authorized insurer shall maintain complete and accurate records  
1488 for the purpose of exposure and loss reimbursement audits as  
1489 required by Florida Hurricane Catastrophe Fund rules. The

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1490 corporation and the authorized insurer shall each maintain  
1491 duplicate copies of policy declaration pages and supporting  
1492 claims documents.

1493       g. The corporation board shall establish in its plan of  
1494 operation standards for quota share agreements which ensure that  
1495 there is no discriminatory application among insurers as to the  
1496 terms of quota share agreements, pricing of quota share  
1497 agreements, incentive provisions if any, and consideration paid  
1498 for servicing policies or adjusting claims.

1499       h. The quota share primary insurance agreement between the  
1500 corporation and an authorized insurer must set forth the  
1501 specific terms under which coverage is provided, including, but  
1502 not limited to, the sale and servicing of policies issued under  
1503 the agreement by the insurance agent of the authorized insurer  
1504 producing the business, the reporting of information concerning  
1505 eligible risks, the payment of premium to the corporation, and  
1506 arrangements for the adjustment and payment of hurricane claims  
1507 incurred on eligible risks by the claims adjuster and personnel  
1508 of the authorized insurer. Entering into a quota sharing  
1509 insurance agreement between the corporation and an authorized  
1510 insurer shall be voluntary and at the discretion of the  
1511 authorized insurer.

1512       3. May provide that the corporation may employ or  
1513 otherwise contract with individuals or other entities to provide  
1514 administrative or professional services that may be appropriate  
1515 to effectuate the plan. The corporation shall have the power to  
1516 borrow funds, by issuing bonds or by incurring other  
1517 indebtedness, and shall have other powers reasonably necessary

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1518 to effectuate the requirements of this subsection, including,  
1519 without limitation, the power to issue bonds and incur other  
1520 indebtedness in order to refinance outstanding bonds or other  
1521 indebtedness. The corporation may, but is not required to, seek  
1522 judicial validation of its bonds or other indebtedness under  
1523 chapter 75. The corporation may issue bonds or incur other  
1524 indebtedness, or have bonds issued on its behalf by a unit of  
1525 local government pursuant to subparagraph (g)2., in the absence  
1526 of a hurricane or other weather-related event, upon a  
1527 determination by the corporation, subject to approval by the  
1528 office, that such action would enable it to efficiently meet the  
1529 financial obligations of the corporation and that such  
1530 financings are reasonably necessary to effectuate the  
1531 requirements of this subsection. The corporation is authorized  
1532 to take all actions needed to facilitate tax-free status for any  
1533 such bonds or indebtedness, including formation of trusts or  
1534 other affiliated entities. The corporation shall have the  
1535 authority to pledge assessments, projected recoveries from the  
1536 Florida Hurricane Catastrophe Fund, other reinsurance  
1537 recoverables, market equalization and other surcharges, and  
1538 other funds available to the corporation as security for bonds  
1539 or other indebtedness. In recognition of s. 10, Art. I of the  
1540 State Constitution, prohibiting the impairment of obligations of  
1541 contracts, it is the intent of the Legislature that no action be  
1542 taken whose purpose is to impair any bond indenture or financing  
1543 agreement or any revenue source committed by contract to such  
1544 bond or other indebtedness.

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1545           4.a. Must require that the corporation operate subject to  
1546 the supervision and approval of a board of governors consisting  
1547 of 8 individuals who are residents of this state, from different  
1548 geographical areas of this state. The Governor, the Chief  
1549 Financial Officer, the President of the Senate, and the Speaker  
1550 of the House of Representatives shall each appoint two members  
1551 of the board, effective August 1, 2005. At least one of the two  
1552 members appointed by each appointing officer must have  
1553 demonstrated expertise in insurance. The Chief Financial Officer  
1554 shall designate one of the appointees as chair. All board  
1555 members serve at the pleasure of the appointing officer. All  
1556 board members, including the chair, must be appointed to serve  
1557 for 3-year terms beginning annually on a date designated by the  
1558 plan. Any board vacancy shall be filled for the unexpired term  
1559 by the appointing officer. The Chief Financial Officer shall  
1560 appoint a technical advisory group to provide information and  
1561 advice to the board of governors in connection with the board's  
1562 duties under this subsection. The executive director and senior  
1563 managers of the corporation shall be engaged by the board, as  
1564 recommended by the Chief Financial Officer, and serve at the  
1565 pleasure of the board. The executive director is responsible for  
1566 employing other staff as the corporation may require, subject to  
1567 review and concurrence by the board and the Chief Financial  
1568 Officer.

1569           b. The board shall create a Market Accountability Advisory  
1570 Committee to assist the corporation in developing awareness of  
1571 its rates and its customer and agent service levels in  
1572 relationship to the voluntary market insurers writing similar

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1573 coverage. The members of the advisory committee shall consist of  
1574 the following 11 persons, one of whom must be elected chair by  
1575 the members of the committee: four representatives, one  
1576 appointed by the Florida Association of Insurance Agents, one by  
1577 the Florida Association of Insurance and Financial Advisors, one  
1578 by the Professional Insurance Agents of Florida, and one by the  
1579 Latin American Association of Insurance Agencies; three  
1580 representatives appointed by the insurers with the three highest  
1581 voluntary market share of residential property insurance  
1582 business in the state; one representative from the Office of  
1583 Insurance Regulation; one consumer appointed by the board who is  
1584 insured by the corporation at the time of appointment to the  
1585 committee; one representative appointed by the Florida  
1586 Association of Realtors; and one representative appointed by the  
1587 Florida Bankers Association. All members must serve for 3-year  
1588 terms and may serve for consecutive terms. The committee shall  
1589 report to the corporation at each board meeting on insurance  
1590 market issues which may include rates and rate competition with  
1591 the voluntary market; service, including policy issuance, claims  
1592 processing, and general responsiveness to policyholders,  
1593 applicants, and agents; and matters relating to depopulation.

1594 5. Must provide a procedure for determining the  
1595 eligibility of a risk for coverage, as follows:

1596 a. Subject to the provisions of s. 627.3517, with respect  
1597 to personal lines residential risks, if the risk is offered  
1598 coverage from an authorized insurer at the insurer's approved  
1599 rate under either a standard policy including wind coverage or,  
1600 if consistent with the insurer's underwriting rules as filed

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1601 with the office, a basic policy including wind coverage, the  
1602 risk is not eligible for any policy issued by the corporation.  
1603 If the risk is not able to obtain any such offer, the risk is  
1604 eligible for either a standard policy including wind coverage or  
1605 a basic policy including wind coverage issued by the  
1606 corporation; however, if the risk could not be insured under a  
1607 standard policy including wind coverage regardless of market  
1608 conditions, the risk shall be eligible for a basic policy  
1609 including wind coverage unless rejected under subparagraph 8.  
1610 The corporation shall determine the type of policy to be  
1611 provided on the basis of objective standards specified in the  
1612 underwriting manual and based on generally accepted underwriting  
1613 practices.

1614 (I) If the risk accepts an offer of coverage through the  
1615 market assistance plan or an offer of coverage through a  
1616 mechanism established by the corporation before a policy is  
1617 issued to the risk by the corporation or during the first 30  
1618 days of coverage by the corporation, and the producing agent who  
1619 submitted the application to the plan or to the corporation is  
1620 not currently appointed by the insurer, the insurer shall:

1621 (A) Pay to the producing agent of record of the policy,  
1622 for the first year, an amount that is the greater of the  
1623 insurer's usual and customary commission for the type of policy  
1624 written or a fee equal to the usual and customary commission of  
1625 the corporation; or

1626 (B) Offer to allow the producing agent of record of the  
1627 policy to continue servicing the policy for a period of not less  
1628 than 1 year and offer to pay the agent the greater of the

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1629 insurer's or the corporation's usual and customary commission  
1630 for the type of policy written.

1631

1632 If the producing agent is unwilling or unable to accept  
1633 appointment, the new insurer shall pay the agent in accordance  
1634 with sub-sub-sub-subparagraph (A).

1635 (II) When the corporation enters into a contractual  
1636 agreement for a take-out plan, the producing agent of record of  
1637 the corporation policy is entitled to retain any unearned  
1638 commission on the policy, and the insurer shall:

1639 (A) Pay to the producing agent of record of the  
1640 corporation policy, for the first year, an amount that is the  
1641 greater of the insurer's usual and customary commission for the  
1642 type of policy written or a fee equal to the usual and customary  
1643 commission of the corporation; or

1644 (B) Offer to allow the producing agent of record of the  
1645 corporation policy to continue servicing the policy for a period  
1646 of not less than 1 year and offer to pay the agent the greater  
1647 of the insurer's or the corporation's usual and customary  
1648 commission for the type of policy written.

1649

1650 If the producing agent is unwilling or unable to accept  
1651 appointment, the new insurer shall pay the agent in accordance  
1652 with sub-sub-sub-subparagraph (A).

1653 b. With respect to commercial lines residential risks, if  
1654 the risk is offered coverage under a policy including wind  
1655 coverage from an authorized insurer at its approved rate, the  
1656 risk is not eligible for any policy issued by the corporation.

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1657 If the risk is not able to obtain any such offer, the risk is  
1658 eligible for a policy including wind coverage issued by the  
1659 corporation.

1660 (I) If the risk accepts an offer of coverage through the  
1661 market assistance plan or an offer of coverage through a  
1662 mechanism established by the corporation before a policy is  
1663 issued to the risk by the corporation or during the first 30  
1664 days of coverage by the corporation, and the producing agent who  
1665 submitted the application to the plan or the corporation is not  
1666 currently appointed by the insurer, the insurer shall:

1667 (A) Pay to the producing agent of record of the policy,  
1668 for the first year, an amount that is the greater of the  
1669 insurer's usual and customary commission for the type of policy  
1670 written or a fee equal to the usual and customary commission of  
1671 the corporation; or

1672 (B) Offer to allow the producing agent of record of the  
1673 policy to continue servicing the policy for a period of not less  
1674 than 1 year and offer to pay the agent the greater of the  
1675 insurer's or the corporation's usual and customary commission  
1676 for the type of policy written.

1677  
1678 If the producing agent is unwilling or unable to accept  
1679 appointment, the new insurer shall pay the agent in accordance  
1680 with sub-sub-sub-subparagraph (A).

1681 (II) When the corporation enters into a contractual  
1682 agreement for a take-out plan, the producing agent of record of  
1683 the corporation policy is entitled to retain any unearned  
1684 commission on the policy, and the insurer shall:

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(A) Pay to the producing agent of record of the corporation policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the corporation policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. To preserve existing incentives for carriers to write dwellings in the voluntary market and not in the corporation, the corporation shall continue to offer authorized insurers, including insurers writing dwellings valued at \$1 million or more, the same voluntary writing credits that were available on January 1, 2006, to carriers writing wind coverage for dwellings in the areas eligible for coverage in the high-risk account.

d. With respect to personal lines residential risks, if the risk is a dwelling with an insured value of \$1 million or more, or if the risk is one that is excluded from the coverage to be provided by the condominium association under s. 718.111(11)(b) and that is insured by the condominium unit owner for a combined dwelling and contents replacement cost of \$1 million or more, the risk is not eligible for any policy issued

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1713 by the corporation. Rates and forms for personal lines  
 1714 residential risks not eligible for coverage by the corporation  
 1715 specified by this sub-subparagraph are not subject to ss.  
 1716 627.062 and 627.0629. Such rates and forms are subject to all  
 1717 other applicable provisions of this code and rules adopted under  
 1718 this code. During the course of an insurer's market conduct  
 1719 examination, the office may review the rate for any risk to  
 1720 which the provisions of this sub-subparagraph are applicable to  
 1721 determine if such rate is inadequate or unfairly discriminatory.  
 1722 Rates on personal lines residential risks not eligible for  
 1723 coverage by the corporation may be found inadequate by the  
 1724 office if they are clearly insufficient, together with the  
 1725 investment income attributable to such risks, to sustain  
 1726 projected losses and expenses in the class of business to which  
 1727 such rates apply. Rates on personal lines residential risks not  
 1728 eligible for coverage by the corporation may also be found  
 1729 inadequate as to the premium charged to a risk or group of risks  
 1730 if discounts or credits are allowed that exceed a reasonable  
 1731 reflection of expense savings and reasonably expected loss  
 1732 experience from the risk or group of risks. Rates on personal  
 1733 lines residential risks not eligible for coverage by the  
 1734 corporation may be found to be unfairly discriminatory as to a  
 1735 risk or group of risks by the office if the application of  
 1736 premium discounts, credits, or surcharges among such risks does  
 1737 not bear a reasonable relationship to the expected loss and  
 1738 expense experience among the various risks. A rating plan,  
 1739 including discounts, credits, or surcharges on personal lines  
 1740 residential risks not eligible for coverage by the corporation

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1741 may also be found to be unfairly discriminatory if the plan  
 1742 fails to clearly and equitably reflect consideration of the  
 1743 policyholder's participation in a risk management program  
 1744 adjusted pursuant to s. 627.0625. The office may order an  
 1745 insurer to discontinue using a rate for new policies or upon  
 1746 renewal of a policy if the office finds the rate to be  
 1747 inadequate or unfairly discriminatory. Insurers must maintain  
 1748 records and documentation relating to rates and forms subject to  
 1749 this sub-subparagraph for a period of at least 5 years after the  
 1750 effective date of the policy.

1751 e. For policies subject to nonrenewal as a result of the  
 1752 risk being no longer eligible for coverage pursuant to sub-  
 1753 paragraph d., the corporation shall, directly or through the  
 1754 market assistance plan, make information from confidential  
 1755 underwriting and claims files of policyholders available only to  
 1756 licensed general lines agents who register with the corporation  
 1757 to receive such information according to the following  
 1758 procedures:

1759 (I) By August 1, 2006, the corporation shall provide  
 1760 policyholders who are not eligible for renewal pursuant to sub-  
 1761 paragraph d. the opportunity to request in writing, within 30  
 1762 days after the notification is sent, that information from their  
 1763 confidential underwriting and claims files not be released to  
 1764 licensed general lines agents registered pursuant to sub-sub-  
 1765 paragraph e. (II);

1766 (II) By August 1, 2006, the corporation shall make  
 1767 available to licensed general lines agents the registration  
 1768 procedures to be used to obtain confidential information from

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1769 underwriting and claims files for policies not eligible for  
1770 renewal pursuant to sub-subparagraph d. As a condition of  
1771 registration, the corporation shall require the licensed general  
1772 lines agent to attest that the agent has the experience and  
1773 relationships with authorized or surplus lines carriers to  
1774 attempt to offer replacement coverage for policies not eligible  
1775 for renewal pursuant to sub-subparagraph d.

1776 (III) By September 1, 2006, the corporation shall make  
1777 available through a secured website to licensed general lines  
1778 agents registered pursuant to sub-sub-subparagraph e.(II)  
1779 application, rating, loss history, mitigation, and policy type  
1780 information relating to all policies not eligible for renewal  
1781 pursuant to sub-subparagraph d. and for which the policyholder  
1782 has not requested the corporation withhold such information  
1783 pursuant to sub-sub-subparagraph e.(I). The licensed general  
1784 lines agent registered pursuant to sub-sub-subparagraph e.(II)  
1785 may use such information to contact and assist the policyholder  
1786 in securing replacement policies and the agent may disclose to  
1787 the policyholder such information was obtained from the  
1788 corporation.

1789 f. With respect to nonhomestead property, eligibility must  
1790 be determined in accordance with sub-sub-sub-subparagraph  
1791 (b)2.a.(II)(A).

1792 6. Must include rules for classifications of risks and  
1793 rates therefor.

1794 7. Must provide that if premium and investment income for  
1795 an account attributable to a particular calendar year are in  
1796 excess of projected losses and expenses for the account

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1797 attributable to that year, such excess shall be held in surplus  
1798 in the account. Such surplus shall be available to defray  
1799 deficits in that account as to future years and shall be used  
1800 for that purpose prior to assessing assessable insurers and  
1801 assessable insureds as to any calendar year.

1802 8. Must provide objective criteria and procedures to be  
1803 uniformly applied for all applicants in determining whether an  
1804 individual risk is so hazardous as to be uninsurable. In making  
1805 this determination and in establishing the criteria and  
1806 procedures, the following shall be considered:

1807 a. Whether the likelihood of a loss for the individual  
1808 risk is substantially higher than for other risks of the same  
1809 class; and

1810 b. Whether the uncertainty associated with the individual  
1811 risk is such that an appropriate premium cannot be determined.

1812  
1813 The acceptance or rejection of a risk by the corporation shall  
1814 be construed as the private placement of insurance, and the  
1815 provisions of chapter 120 shall not apply.

1816 9. Must provide that the corporation shall make its best  
1817 efforts to procure catastrophe reinsurance at reasonable rates,  
1818 to cover its projected 100-year probable maximum loss in the  
1819 homestead accounts as determined by the board of governors.

1820 10. Must provide that in the event of regular deficit  
1821 assessments under sub-subparagraph (b)3.a. or sub-subparagraph  
1822 (b)3.b., in the personal lines homestead account, the commercial  
1823 lines residential homestead account, or the high-risk homestead  
1824 account, the corporation shall levy upon corporation homestead

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1825 account policyholders in its next rate filing, or by a separate  
1826 rate filing solely for this purpose, a Citizens policyholder  
1827 ~~market-equalization~~ surcharge arising from a regular assessment  
1828 in such account in a percentage equal to the total amount of  
1829 such regular assessments divided by the aggregate statewide  
1830 direct written premium for subject lines of business for the  
1831 ~~prior-calendar~~ year preceding the year in which the deficit to  
1832 which the regular assessment related is incurred. Citizens  
1833 policyholder Market-equalization surcharges under this  
1834 subparagraph are not considered premium and are not subject to  
1835 commissions, fees, or premium taxes; however, failure to pay the  
1836 Citizens policyholder ~~a market-equalization~~ surcharge shall be  
1837 treated as failure to pay premium. Notwithstanding any other  
1838 provision of this section, for purposes of the Citizens  
1839 policyholder surcharges to be levied pursuant to this  
1840 subparagraph, the total amount of the regular assessment to  
1841 which such Citizens policyholder surcharge relates shall be  
1842 determined as set forth in sub-subparagraphs (b)3.a., b., and c.

1843 11. The policies issued by the corporation must provide  
1844 that, if the corporation or the market assistance plan obtains  
1845 an offer from an authorized insurer to cover the risk at its  
1846 approved rates, the risk is no longer eligible for renewal  
1847 through the corporation.

1848 12. Corporation policies and applications must include a  
1849 notice that the corporation policy could, under this section, be  
1850 replaced with a policy issued by an authorized insurer that does  
1851 not provide coverage identical to the coverage provided by the  
1852 corporation or an insurer writing coverage pursuant to part VIII

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1853   of chapter 626. The notice shall also specify that acceptance of  
1854   corporation coverage creates a conclusive presumption that the  
1855   applicant or policyholder is aware of this potential.

1856          13.   May establish, subject to approval by the office,  
1857   different eligibility requirements and operational procedures  
1858   for any line or type of coverage for any specified county or  
1859   area if the board determines that such changes to the  
1860   eligibility requirements and operational procedures are  
1861   justified due to the voluntary market being sufficiently stable  
1862   and competitive in such area or for such line or type of  
1863   coverage and that consumers who, in good faith, are unable to  
1864   obtain insurance through the voluntary market through ordinary  
1865   methods would continue to have access to coverage from the  
1866   corporation. When coverage is sought in connection with a real  
1867   property transfer, such requirements and procedures shall not  
1868   provide for an effective date of coverage later than the date of  
1869   the closing of the transfer as established by the transferor,  
1870   the transferee, and, if applicable, the lender.

1871          14.   Must provide that, with respect to the high-risk  
1872   homestead account, any assessable insurer with a surplus as to  
1873   policyholders of \$25 million or less writing 25 percent or more  
1874   of its total countrywide property insurance premiums in this  
1875   state may petition the office, within the first 90 days of each  
1876   calendar year, to qualify as a limited apportionment company. In  
1877   no event shall a limited apportionment company be required to  
1878   participate in the portion of any assessment, within the high-  
1879   risk account, pursuant to sub-subparagraph (b)3.a. or sub-  
1880   subparagraph (b)3.b. in the aggregate which exceeds \$50 million

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1881 after payment of available high-risk account funds in any  
1882 calendar year. However, a limited apportionment company shall  
1883 collect from its policyholders any emergency assessment imposed  
1884 under sub-subparagraph (b)3.d. The plan shall provide that, if  
1885 the office determines that any regular assessment will result in  
1886 an impairment of the surplus of a limited apportionment company,  
1887 the office may direct that all or part of such assessment be  
1888 deferred as provided in subparagraph (g)4. However, there shall  
1889 be no limitation or deferment of an emergency assessment to be  
1890 collected from policyholders under sub-subparagraph (b)3.d.

1891 15. Must provide that the corporation appoint as its  
1892 licensed agents only those agents who also hold an appointment  
1893 as defined in s. 626.015(3) with an insurer who at the time of  
1894 the agent's initial appointment by the corporation is authorized  
1895 to write and is actually writing personal lines residential  
1896 property coverage, commercial residential property coverage, or  
1897 commercial nonresidential property coverage within the state.

1898 16. Must provide that the hurricane deductible for any  
1899 property in the nonhomestead account with an insured value of  
1900 \$250,000 or more must be at least 5 percent of the insured  
1901 value.

1902 17. Must provide that the application for coverage under  
1903 the nonhomestead account and the declaration page of each  
1904 nonhomestead account policy include a statement in boldface 12-  
1905 point type specifying that public subsidies do not support the  
1906 corporation's coverage of nonhomestead property; that if the  
1907 nonhomestead account of the corporation sustains a deficit or is  
1908 unable to pay claims, the nonhomestead policyholder shall be

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1909   subject to an immediate assessment in an amount up to 100  
1910   percent of the premium and a further assessment upon renewal of  
1911   the policy; and that the applicant or policyholder may wish to  
1912   seek alternative coverage from an authorized insurer or surplus  
1913   lines insurer that will not be subject to such potential  
1914   assessments.

1915       18. Must provide that the application for coverage under  
1916   any of the homestead accounts and the declaration page of each  
1917   homestead account policy include a statement in boldface 12-  
1918   point type specifying that a false declaration of homestead  
1919   status for purposes of obtaining coverage in any of the  
1920   homestead accounts may constitute the offense of insurance  
1921   fraud, as prohibited and punishable as a felony under s.  
1922   817.234.

1923       19. Must provide for purchase by the corporation of  
1924   catastrophe reinsurance on the nonhomestead account in amounts  
1925   sufficient, together with coverage under the Florida Hurricane  
1926   Catastrophe Fund, to cover the account's 250-year probable  
1927   maximum loss.

1928       (d)1.a. It is the intent of the Legislature that the rates  
1929   for coverage provided by the corporation be actuarially sound  
1930   and not competitive with approved rates charged in the admitted  
1931   voluntary market, so that the corporation functions as a  
1932   residual market mechanism to provide insurance only when the  
1933   insurance cannot be procured in the voluntary market. Rates  
1934   shall include a residual market risk load that reflects the  
1935   concentrated exposure of the corporation and the impact of  
1936   adverse selection as well as an appropriate catastrophe loading

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1937 factor that reflects the actual catastrophic exposure of the  
1938 corporation.

1939        b. It is the intent of the Legislature to reaffirm the  
1940 requirement of rate adequacy in the residual market. Recognizing  
1941 that rates may comply with the intent expressed in sub-  
1942 subparagraph a. and yet be inadequate and recognizing the public  
1943 need to limit subsidies within the residual market, it is the  
1944 further intent of the Legislature to establish statutory  
1945 standards for rate adequacy. Such standards are intended to  
1946 supplement the standard specified in s. 627.062(2)(e)3.,  
1947 providing that rates are inadequate if they are clearly  
1948 insufficient to sustain projected losses and expenses in the  
1949 class of business to which they apply.

1950        2. For each county, the average rates of the corporation  
1951 for each line of business for personal lines residential  
1952 policies excluding rates for wind-only policies shall be no  
1953 lower than the average rates charged by the insurer that had the  
1954 highest average rate in that county among the 20 insurers with  
1955 the greatest total direct written premium in the state for that  
1956 line of business in the preceding year, except that with respect  
1957 to mobile home coverages, the average rates of the corporation  
1958 shall be no lower than the average rates charged by the insurer  
1959 that had the highest average rate in that county among the 5  
1960 insurers with the greatest total written premium for mobile home  
1961 owner's policies in the state in the preceding year.

1962        3. Rates for personal lines residential wind-only policies  
1963 must be actuarially sound and not competitive with approved  
1964 rates charged by authorized insurers. Corporation rate manuals

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shall include a rate surcharge for seasonal occupancy. To ensure that personal lines residential wind-only rates are not competitive with approved rates charged by authorized insurers, the corporation, in conjunction with the office, shall develop a wind-only ratemaking methodology, which methodology shall be contained in each rate filing made by the corporation with the office. If the office determines that the wind-only rates or rating factors filed by the corporation fail to comply with the wind-only ratemaking methodology provided for in this subsection, it shall so notify the corporation and require the corporation to amend its rates or rating factors to come into compliance within 90 days of notice from the office.

4. For the purposes of establishing a pilot program to evaluate issues relating to the availability and affordability of insurance in an area where historically there has been little market competition, the provisions of subparagraph 2. do not apply to coverage provided by the corporation in Monroe County if the office determines that a reasonable degree of competition does not exist for personal lines residential policies. The provisions of subparagraph 3. do not apply to coverage provided by the corporation in Monroe County if the office determines that a reasonable degree of competition does not exist for personal lines residential policies in the area of that county which is eligible for wind-only coverage. In this county, the rates for personal lines residential coverage shall be actuarially sound and not excessive, inadequate, or unfairly discriminatory and are subject to the other provisions of the paragraph and s. 627.062. The commission shall adopt rules

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1993 establishing the criteria for determining whether a reasonable  
1994 degree of competition exists for personal lines residential  
1995 policies in Monroe County. By March 1, 2006, the office shall  
1996 submit a report to the Legislature providing an evaluation of  
1997 the implementation of the pilot program affecting Monroe County.

1998       5. Rates for commercial lines coverage shall not be  
1999 subject to the requirements of subparagraph 2., but shall be  
2000 subject to all other requirements of this paragraph and s.  
2001 627.062.

2002       6.a. Nothing in this paragraph shall require or allow the  
2003 corporation to adopt a rate that is inadequate under s. 627.062  
2004 or under sub-subparagraph b. or sub-subparagraph c.

2005       b. With respect to rates for coverage in any homestead  
2006 account, a rate is deemed inadequate if the rate is not  
2007 sufficient to generate, by means of cash flow, procurement of  
2008 coverage under the Florida Hurricane Catastrophe Fund;  
2009 procurement of reinsurance; and investment income, moneys  
2010 sufficient to pay all claims and expenses reasonably expected to  
2011 result from a 100-year probable maximum loss event without  
2012 resort to any regular or emergency assessments, long-term debt,  
2013 state revenues, or other funding sources that reflect any  
2014 subsidy from persons or entities other than corporation  
2015 homestead accounts policyholders.

2016       c. With respect to rates for coverage in the nonhomestead  
2017 account, a rate is deemed inadequate if the rate is not  
2018 sufficient to generate, by means of cash flow, procurement of  
2019 coverage under the Florida Hurricane Catastrophe Fund;  
2020 procurement of reinsurance; and investment income, moneys

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2021 sufficient to pay all claims and expenses reasonably expected to  
2022 result from a 250-year probable maximum loss event without  
2023 resort to any assessments, debt, state revenues, or other  
2024 funding sources that reflect any subsidy from persons or  
2025 entities other than corporation nonhomestead account  
2026 policyholders.

2027         7. The corporation shall certify to the office at least  
2028 twice annually that its personal lines rates comply with the  
2029 requirements of subparagraphs 1., and 2., and 6. If any  
2030 adjustment in the rates or rating factors of the corporation is  
2031 necessary to ensure such compliance, the corporation shall make  
2032 and implement such adjustments and file its revised rates and  
2033 rating factors with the office. If the office thereafter  
2034 determines that the revised rates and rating factors fail to  
2035 comply with the provisions of subparagraphs 1. and 2., it shall  
2036 notify the corporation and require the corporation to amend its  
2037 rates or rating factors in conjunction with its next rate  
2038 filing. The office must notify the corporation by electronic  
2039 means of any rate filing it approves for any insurer among the  
2040 insurers referred to in subparagraph 2.

2041         8. In addition to the rates otherwise determined pursuant  
2042 to this paragraph, the corporation shall impose and collect an  
2043 amount equal to the premium tax provided for in s. 624.509 to  
2044 augment the financial resources of the corporation.

2045         ~~9.a. To assist the corporation in developing additional~~  
2046 ~~ratemaking methods to assure compliance with subparagraphs 1.~~  
2047 ~~and 4., the corporation shall appoint a rate methodology panel~~  
2048 ~~consisting of one person recommended by the Florida Association~~



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2049 ~~of Insurance Agents, one person recommended by the Professional~~  
2050 ~~Insurance Agents of Florida, one person recommended by the~~  
2051 ~~Florida Association of Insurance and Financial Advisors, one~~  
2052 ~~person recommended by the insurer with the highest voluntary~~  
2053 ~~market share of residential property insurance business in the~~  
2054 ~~state, one person recommended by the insurer with the second-~~  
2055 ~~highest voluntary market share of residential property insurance~~  
2056 ~~business in the state, one person recommended by an insurer~~  
2057 ~~writing commercial residential property insurance in this state,~~  
2058 ~~one person recommended by the Office of Insurance Regulation,~~  
2059 ~~and one board member designated by the board chairman, who shall~~  
2060 ~~serve as chairman of the panel.~~

2061       ~~b. By January 1, 2004, the rate methodology panel shall~~  
2062 ~~provide a report to the corporation of its findings and~~  
2063 ~~recommendations for the use of additional ratemaking methods and~~  
2064 ~~procedures, including the use of a rate equalization surcharge~~  
2065 ~~in an amount sufficient to assure that the total cost of~~  
2066 ~~coverage for policyholders or applicants to the corporation is~~  
2067 ~~sufficient to comply with subparagraph 1.~~

2068       ~~c. Within 30 days after such report, the corporation shall~~  
2069 ~~present to the President of the Senate, the Speaker of the House~~  
2070 ~~of Representatives, the minority party leaders of each house of~~  
2071 ~~the Legislature, and the chairs of the standing committees of~~  
2072 ~~each house of the Legislature having jurisdiction of insurance~~  
2073 ~~issues, a plan for implementing the additional ratemaking~~  
2074 ~~methods and an outline of any legislation needed to facilitate~~  
2075 ~~use of the new methods.~~

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2076        ~~d. The plan must include a provision that producer~~  
2077        ~~commissions paid by the corporation shall not be calculated in~~  
2078        ~~such a manner as to include any rate equalization surcharge.~~  
2079        ~~However, without regard to the plan to be developed or its~~  
2080        ~~implementation, producer commissions paid by the corporation for~~  
2081        ~~each account, other than the quota share primary program, shall~~  
2082        ~~remain fixed as to percentage, effective rate, calculation, and~~  
2083        ~~payment method until January 1, 2004.~~

2084        9.10. By January 1, 2004, The corporation shall provide  
2085        ~~develop~~ a notice to policyholders or applicants that the rates  
2086        of Citizens Property Insurance Corporation are intended to be  
2087        higher than the rates of any admitted carrier and providing  
2088        other information the corporation deems necessary to assist  
2089        consumers in finding other voluntary admitted insurers willing  
2090        to insure their property.

2091        (e) If coverage in an account is deactivated pursuant to  
2092        paragraph (f), coverage through the corporation shall be  
2093        reactivated by order of the office only under one of the  
2094        following circumstances:

2095        1. If the market assistance plan receives a minimum of 100  
2096        applications for coverage within a 3-month period, or 200  
2097        applications for coverage within a 1-year period or less for  
2098        residential coverage, unless the market assistance plan provides  
2099        a quotation from admitted carriers at their filed rates for at  
2100        least 90 percent of such applicants. Any market assistance plan  
2101        application that is rejected because an individual risk is so  
2102        hazardous as to be uninsurable using the criteria specified in  
2103        subparagraph (c)8. shall not be included in the minimum

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2104 percentage calculation provided herein. In the event that there  
2105 is a legal or administrative challenge to a determination by the  
2106 office that the conditions of this subparagraph have been met  
2107 for eligibility for coverage in the corporation, any eligible  
2108 risk may obtain coverage during the pendency of such challenge.

2109       2. In response to a state of emergency declared by the  
2110 Governor under s. 252.36, the office may activate coverage by  
2111 order for the period of the emergency upon a finding by the  
2112 office that the emergency significantly affects the availability  
2113 of residential property insurance.

2114       (f)1. The corporation shall file with the office quarterly  
2115 statements of financial condition, an annual statement of  
2116 financial condition, and audited financial statements in the  
2117 manner prescribed by law. In addition, the corporation shall  
2118 report to the office monthly on the types, premium, exposure,  
2119 and distribution by county of its policies in force, and shall  
2120 submit other reports as the office requires to carry out its  
2121 oversight of the corporation.

2122       2. The activities of the corporation shall be reviewed at  
2123 least annually by the office to determine whether coverage shall  
2124 be deactivated in an account on the basis that the conditions  
2125 giving rise to its activation no longer exist.

2126       (g)1. The corporation shall certify to the office its  
2127 needs for annual assessments as to a particular calendar year,  
2128 and for any interim assessments that it deems to be necessary to  
2129 sustain operations as to a particular year pending the receipt  
2130 of annual assessments. Upon verification, the office shall  
2131 approve such certification, and the corporation shall levy such

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2132 annual or interim assessments. Such assessments shall be  
2133 prorated as provided in paragraph (b). The corporation shall  
2134 take all reasonable and prudent steps necessary to collect the  
2135 amount of assessment due from each assessable insurer,  
2136 including, if prudent, filing suit to collect such assessment.  
2137 If the corporation is unable to collect an assessment from any  
2138 assessable insurer, the uncollected assessments shall be levied  
2139 as an additional assessment against the assessable insurers and  
2140 any assessable insurer required to pay an additional assessment  
2141 as a result of such failure to pay shall have a cause of action  
2142 against such nonpaying assessable insurer. Assessments shall be  
2143 included as an appropriate factor in the making of rates. The  
2144 failure of a surplus lines agent to collect and remit any  
2145 regular or emergency assessment levied by the corporation is  
2146 considered to be a violation of s. 626.936 and subjects the  
2147 surplus lines agent to the penalties provided in that section.

2148 2. The governing body of any unit of local government, any  
2149 residents of which are insured by the corporation, may issue  
2150 bonds as defined in s. 125.013 or s. 166.101 from time to time  
2151 to fund an assistance program, in conjunction with the  
2152 corporation, for the purpose of defraying deficits of the  
2153 corporation. In order to avoid needless and indiscriminate  
2154 proliferation, duplication, and fragmentation of such assistance  
2155 programs, any unit of local government, any residents of which  
2156 are insured by the corporation, may provide for the payment of  
2157 losses, regardless of whether or not the losses occurred within  
2158 or outside of the territorial jurisdiction of the local  
2159 government. Revenue bonds under this subparagraph may not be

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2160 issued until validated pursuant to chapter 75, unless a state of  
2161 emergency is declared by executive order or proclamation of the  
2162 Governor pursuant to s. 252.36 making such findings as are  
2163 necessary to determine that it is in the best interests of, and  
2164 necessary for, the protection of the public health, safety, and  
2165 general welfare of residents of this state and declaring it an  
2166 essential public purpose to permit certain municipalities or  
2167 counties to issue such bonds as will permit relief to claimants  
2168 and policyholders of the corporation. Any such unit of local  
2169 government may enter into such contracts with the corporation  
2170 and with any other entity created pursuant to this subsection as  
2171 are necessary to carry out this paragraph. Any bonds issued  
2172 under this subparagraph shall be payable from and secured by  
2173 moneys received by the corporation from emergency assessments  
2174 under sub-subparagraph (b)3.d., and assigned and pledged to or  
2175 on behalf of the unit of local government for the benefit of the  
2176 holders of such bonds. The funds, credit, property, and taxing  
2177 power of the state or of the unit of local government shall not  
2178 be pledged for the payment of such bonds. If any of the bonds  
2179 remain unsold 60 days after issuance, the office shall require  
2180 all insurers subject to assessment to purchase the bonds, which  
2181 shall be treated as admitted assets; each insurer shall be  
2182 required to purchase that percentage of the unsold portion of  
2183 the bond issue that equals the insurer's relative share of  
2184 assessment liability under this subsection. An insurer shall not  
2185 be required to purchase the bonds to the extent that the office  
2186 determines that the purchase would endanger or impair the  
2187 solvency of the insurer.

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2188           3.a. The corporation shall adopt one or more programs  
2189 subject to approval by the office for the reduction of both new  
2190 and renewal writings in the corporation. Any program the  
2191 corporation adopts for the payment of bonuses to an insurer for  
2192 each risk the insurer removes from the corporation shall comply  
2193 with s. 627.3511(2) and may not exceed the amount referenced in  
2194 s. 627.3511(2) for each risk removed. The corporation may  
2195 consider any prudent and not unfairly discriminatory approach to  
2196 reducing corporation writings, and may adopt a credit against  
2197 assessment liability or other liability that provides an  
2198 incentive for insurers to take risks out of the corporation and  
2199 to keep risks out of the corporation by maintaining or  
2200 increasing voluntary writings in counties or areas in which  
2201 corporation risks are highly concentrated and a program to  
2202 provide a formula under which an insurer voluntarily taking  
2203 risks out of the corporation by maintaining or increasing  
2204 voluntary writings will be relieved wholly or partially from  
2205 assessments under sub-subparagraphs (b)3.a. and b. When the  
2206 corporation enters into a contractual agreement for a take-out  
2207 plan, the producing agent of record of the corporation policy is  
2208 entitled to retain any unearned commission on such policy, and  
2209 the insurer shall either:  
2210           (I) Pay to the producing agent of record of the policy,  
2211 for the first year, an amount which is the greater of the  
2212 insurer's usual and customary commission for the type of policy  
2213 written or a policy fee equal to the usual and customary  
2214 commission of the corporation; or

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2215           (II) Offer to allow the producing agent of record of the  
2216 policy to continue servicing the policy for a period of not less  
2217 than 1 year and offer to pay the agent the insurer's usual and  
2218 customary commission for the type of policy written. If the  
2219 producing agent is unwilling or unable to accept appointment by  
2220 the new insurer, the new insurer shall pay the agent in  
2221 accordance with sub-sub-subparagraph (I).

2222           b. Any credit or exemption from regular assessments  
2223 adopted under this subparagraph shall last no longer than the 3  
2224 years following the cancellation or expiration of the policy by  
2225 the corporation. With the approval of the office, the board may  
2226 extend such credits for an additional year if the insurer  
2227 guarantees an additional year of renewability for all policies  
2228 removed from the corporation, or for 2 additional years if the  
2229 insurer guarantees 2 additional years of renewability for all  
2230 policies so removed.

2231           c. There shall be no credit, limitation, exemption, or  
2232 deferment from emergency assessments to be collected from  
2233 policyholders pursuant to sub-subparagraph (b)3.d.

2234           4. The plan shall provide for the deferment, in whole or  
2235 in part, of the assessment of an assessable insurer, other than  
2236 an emergency assessment collected from policyholders pursuant to  
2237 sub-subparagraph (b)3.d., if the office finds that payment of  
2238 the assessment would endanger or impair the solvency of the  
2239 insurer. In the event an assessment against an assessable  
2240 insurer is deferred in whole or in part, the amount by which  
2241 such assessment is deferred may be assessed against the other

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2242 assessable insurers in a manner consistent with the basis for  
2243 assessments set forth in paragraph (b).

2244 (h) Nothing in this subsection shall be construed to  
2245 preclude the issuance of residential property insurance coverage  
2246 pursuant to part VIII of chapter 626.

2247 (i) There shall be no liability on the part of, and no  
2248 cause of action of any nature shall arise against, any  
2249 assessable insurer or its agents or employees, the corporation  
2250 or its agents or employees, members of the board of governors or  
2251 their respective designees at a board meeting, corporation  
2252 committee members, or the office or its representatives, for any  
2253 action taken by them in the performance of their duties or  
2254 responsibilities under this subsection. Such immunity does not  
2255 apply to:

2256 1. Any of the foregoing persons or entities for any  
2257 willful tort;

2258 2. The corporation or its producing agents for breach of  
2259 any contract or agreement pertaining to insurance coverage;

2260 3. The corporation with respect to issuance or payment of  
2261 debt; or

2262 4. Any assessable insurer with respect to any action to  
2263 enforce an assessable insurer's obligations to the corporation  
2264 under this subsection.

2265 (j) For the purposes of s. 199.183(1), the corporation  
2266 shall be considered a political subdivision of the state and  
2267 shall be exempt from the corporate income tax. The premiums,  
2268 assessments, investment income, and other revenue of the  
2269 corporation are funds received for providing property insurance



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2270 coverage as required by this subsection, paying claims for  
2271 Florida citizens insured by the corporation, securing and  
2272 repaying debt obligations issued by the corporation, and  
2273 conducting all other activities of the corporation, and shall  
2274 not be considered taxes, fees, licenses, or charges for services  
2275 imposed by the Legislature on individuals, businesses, or  
2276 agencies outside state government. Bonds and other debt  
2277 obligations issued by or on behalf of the corporation are not to  
2278 be considered "state bonds" within the meaning of s. 215.58(8).  
2279 The corporation is not subject to the procurement provisions of  
2280 chapter 287, and policies and decisions of the corporation  
2281 relating to incurring debt, levying of assessments and the sale,  
2282 issuance, continuation, terms and claims under corporation  
2283 policies, and all services relating thereto, are not subject to  
2284 the provisions of chapter 120. The corporation is not required  
2285 to obtain or to hold a certificate of authority issued by the  
2286 office, nor is it required to participate as a member insurer of  
2287 the Florida Insurance Guaranty Association. However, the  
2288 corporation is required to pay, in the same manner as an  
2289 authorized insurer, assessments pledged by the Florida Insurance  
2290 Guaranty Association to secure bonds issued or other  
2291 indebtedness incurred to pay covered claims arising from insurer  
2292 insolvencies caused by, or proximately related to, hurricane  
2293 losses. It is the intent of the Legislature that the tax  
2294 exemptions provided in this paragraph will augment the financial  
2295 resources of the corporation to better enable the corporation to  
2296 fulfill its public purposes. Any debt obligations ~~bonds~~ issued  
2297 by the corporation, their transfer, and the income therefrom,

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2298 including any profit made on the sale thereof, shall at all  
2299 times be free from taxation of every kind by the state and any  
2300 political subdivision or local unit or other instrumentality  
2301 thereof; however, this exemption does not apply to any tax  
2302 imposed by chapter 220 on interest, income, or profits on debt  
2303 obligations owned by corporations other than the corporation.

2304       (k) Upon a determination by the office that the conditions  
2305 giving rise to the establishment and activation of the  
2306 corporation no longer exist, the corporation is dissolved. Upon  
2307 dissolution, the assets of the corporation shall be applied  
2308 first to pay all debts, liabilities, and obligations of the  
2309 corporation, including the establishment of reasonable reserves  
2310 for any contingent liabilities or obligations, and all remaining  
2311 assets of the corporation shall become property of the state and  
2312 shall be deposited in the Florida Hurricane Catastrophe Fund.  
2313 However, no dissolution shall take effect as long as the  
2314 corporation has bonds or other financial obligations outstanding  
2315 unless adequate provision has been made for the payment of the  
2316 bonds or other financial obligations pursuant to the documents  
2317 authorizing the issuance of the bonds or other financial  
2318 obligations.

2319       (1)1. Effective July 1, 2002, policies of the Residential  
2320 Property and Casualty Joint Underwriting Association shall  
2321 become policies of the corporation. All obligations, rights,  
2322 assets and liabilities of the Residential Property and Casualty  
2323 Joint Underwriting Association, including bonds, note and debt  
2324 obligations, and the financing documents pertaining to them  
2325 become those of the corporation as of July 1, 2002. The

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2326 corporation is not required to issue endorsements or  
2327 certificates of assumption to insureds during the remaining term  
2328 of in-force transferred policies.

2329       2. Effective July 1, 2002, policies of the Florida  
2330 Windstorm Underwriting Association are transferred to the  
2331 corporation and shall become policies of the corporation. All  
2332 obligations, rights, assets, and liabilities of the Florida  
2333 Windstorm Underwriting Association, including bonds, note and  
2334 debt obligations, and the financing documents pertaining to them  
2335 are transferred to and assumed by the corporation on July 1,  
2336 2002. The corporation is not required to issue endorsement or  
2337 certificates of assumption to insureds during the remaining term  
2338 of in-force transferred policies.

2339       3. The Florida Windstorm Underwriting Association and the  
2340 Residential Property and Casualty Joint Underwriting Association  
2341 shall take all actions as may be proper to further evidence the  
2342 transfers and shall provide the documents and instruments of  
2343 further assurance as may reasonably be requested by the  
2344 corporation for that purpose. The corporation shall execute  
2345 assumptions and instruments as the trustees or other parties to  
2346 the financing documents of the Florida Windstorm Underwriting  
2347 Association or the Residential Property and Casualty Joint  
2348 Underwriting Association may reasonably request to further  
2349 evidence the transfers and assumptions, which transfers and  
2350 assumptions, however, are effective on the date provided under  
2351 this paragraph whether or not, and regardless of the date on  
2352 which, the assumptions or instruments are executed by the  
2353 corporation. Subject to the relevant financing documents

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2354    pertaining to their outstanding bonds, notes, indebtedness, or  
2355    other financing obligations, the moneys, investments,  
2356    receivables, choses in action, and other intangibles of the  
2357    Florida Windstorm Underwriting Association shall be credited to  
2358    the high-risk account of the corporation, and those of the  
2359    personal lines residential coverage account and the commercial  
2360    lines residential coverage account of the Residential Property  
2361    and Casualty Joint Underwriting Association shall be credited to  
2362    the personal lines account and the commercial lines account,  
2363    respectively, of the corporation.

2364        ~~4. Effective July 1, 2002, a new applicant for property~~  
2365    ~~insurance coverage who would otherwise have been eligible for~~  
2366    ~~coverage in the Florida Windstorm Underwriting Association is~~  
2367    ~~eligible for coverage from the corporation as provided in this~~  
2368    ~~subsection.~~

2369        4.5. The transfer of all policies, obligations, rights,  
2370    assets, and liabilities from the Florida Windstorm Underwriting  
2371    Association to the corporation and the renaming of the  
2372    Residential Property and Casualty Joint Underwriting Association  
2373    as the corporation shall in no way affect the coverage with  
2374    respect to covered policies as defined in s. 215.555(2)(c)  
2375    provided to these entities by the Florida Hurricane Catastrophe  
2376    Fund. The coverage provided by the Florida Hurricane Catastrophe  
2377    Fund to the Florida Windstorm Underwriting Association based on  
2378    its exposures as of June 30, 2002, and each June 30 thereafter  
2379    shall be redesignated as coverage for the high-risk account of  
2380    the corporation. Notwithstanding any other provision of law, the  
2381    coverage provided by the Florida Hurricane Catastrophe Fund to

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2382 the Residential Property and Casualty Joint Underwriting  
2383 Association based on its exposures as of June 30, 2002, and each  
2384 June 30 thereafter shall be transferred to the personal lines  
2385 account and the commercial lines account of the corporation.  
2386 Notwithstanding any other provision of law, the high-risk  
2387 account shall be treated, for all Florida Hurricane Catastrophe  
2388 Fund purposes, as if it were a separate participating insurer  
2389 with its own exposures, reimbursement premium, and loss  
2390 reimbursement. Likewise, the personal lines and commercial lines  
2391 accounts shall be viewed together, for all Florida Hurricane  
2392 Catastrophe Fund purposes, as if the two accounts were one and  
2393 represent a single, separate participating insurer with its own  
2394 exposures, reimbursement premium, and loss reimbursement. The  
2395 coverage provided by the Florida Hurricane Catastrophe Fund to  
2396 the corporation shall constitute and operate as a full transfer  
2397 of coverage from the Florida Windstorm Underwriting Association  
2398 and Residential Property and Casualty Joint Underwriting to the  
2399 corporation.

2400 (m) Notwithstanding any other provision of law:

2401 1. The pledge or sale of, the lien upon, and the security  
2402 interest in any rights, revenues, or other assets of the  
2403 corporation created or purported to be created pursuant to any  
2404 financing documents to secure any bonds or other indebtedness of  
2405 the corporation shall be and remain valid and enforceable,  
2406 notwithstanding the commencement of and during the continuation  
2407 of, and after, any rehabilitation, insolvency, liquidation,  
2408 bankruptcy, receivership, conservatorship, reorganization, or

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2409 similar proceeding against the corporation under the laws of  
2410 this state.

2411         2. No such proceeding shall relieve the corporation of its  
2412 obligation, or otherwise affect its ability to perform its  
2413 obligation, to continue to collect, or levy and collect,  
2414 assessments, market equalization or other surcharges under  
2415 subparagraph (c)10., or any other rights, revenues, or other  
2416 assets of the corporation pledged pursuant to any financing  
2417 documents.

2418         3. Each such pledge or sale of, lien upon, and security  
2419 interest in, including the priority of such pledge, lien, or  
2420 security interest, any such assessments, market equalization or  
2421 other surcharges, or other rights, revenues, or other assets  
2422 which are collected, or levied and collected, after the  
2423 commencement of and during the pendency of, or after, any such  
2424 proceeding shall continue unaffected by such proceeding. As used  
2425 in this subsection, the term "financing documents" means any  
2426 agreement or agreements, instrument or instruments, or other  
2427 document or documents now existing or hereafter created  
2428 evidencing any bonds or other indebtedness of the corporation or  
2429 pursuant to which any such bonds or other indebtedness has been  
2430 or may be issued and pursuant to which any rights, revenues, or  
2431 other assets of the corporation are pledged or sold to secure  
2432 the repayment of such bonds or indebtedness, together with the  
2433 payment of interest on such bonds or such indebtedness, or the  
2434 payment of any other obligation or financial product, as defined  
2435 in the plan of operation of the corporation related to such  
2436 bonds or indebtedness.

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2437           4. Any such pledge or sale of assessments, revenues,  
2438 contract rights, or other rights or assets of the corporation  
2439 shall constitute a lien and security interest, or sale, as the  
2440 case may be, that is immediately effective and attaches to such  
2441 assessments, revenues, or contract rights or other rights or  
2442 assets, whether or not imposed or collected at the time the  
2443 pledge or sale is made. Any such pledge or sale is effective,  
2444 valid, binding, and enforceable against the corporation or other  
2445 entity making such pledge or sale, and valid and binding against  
2446 and superior to any competing claims or obligations owed to any  
2447 other person or entity, including policyholders in this state,  
2448 asserting rights in any such assessments, revenues, or contract  
2449 rights or other rights or assets to the extent set forth in and  
2450 in accordance with the terms of the pledge or sale contained in  
2451 the applicable financing documents, whether or not any such  
2452 person or entity has notice of such pledge or sale and without  
2453 the need for any physical delivery, recordation, filing, or  
2454 other action.

2455           (n)1. The following records of the corporation are  
2456 confidential and exempt from the provisions of s. 119.07(1) and  
2457 s. 24(a), Art. I of the State Constitution:

2458           a. Underwriting files, except that a policyholder or an  
2459 applicant shall have access to his or her own underwriting  
2460 files.

2461           b. Claims files, until termination of all litigation and  
2462 settlement of all claims arising out of the same incident,  
2463 although portions of the claims files may remain exempt, as  
2464 otherwise provided by law. Confidential and exempt claims file

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2465 records may be released to other governmental agencies upon  
2466 written request and demonstration of need; such records held by  
2467 the receiving agency remain confidential and exempt as provided  
2468 for herein.

2469       c. Records obtained or generated by an internal auditor  
2470 pursuant to a routine audit, until the audit is completed, or if  
2471 the audit is conducted as part of an investigation, until the  
2472 investigation is closed or ceases to be active. An investigation  
2473 is considered "active" while the investigation is being  
2474 conducted with a reasonable, good faith belief that it could  
2475 lead to the filing of administrative, civil, or criminal  
2476 proceedings.

2477       d. Matters reasonably encompassed in privileged attorney-  
2478 client communications.

2479       e. Proprietary information licensed to the corporation  
2480 under contract and the contract provides for the confidentiality  
2481 of such proprietary information.

2482       f. All information relating to the medical condition or  
2483 medical status of a corporation employee which is not relevant  
2484 to the employee's capacity to perform his or her duties, except  
2485 as otherwise provided in this paragraph. Information which is  
2486 exempt shall include, but is not limited to, information  
2487 relating to workers' compensation, insurance benefits, and  
2488 retirement or disability benefits.

2489       g. Upon an employee's entrance into the employee  
2490 assistance program, a program to assist any employee who has a  
2491 behavioral or medical disorder, substance abuse problem, or  
2492 emotional difficulty which affects the employee's job



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2493 performance, all records relative to that participation shall be  
2494 confidential and exempt from the provisions of s. 119.07(1) and  
2495 s. 24(a), Art. I of the State Constitution, except as otherwise  
2496 provided in s. 112.0455(11).

2497       h. Information relating to negotiations for financing,  
2498 reinsurance, depopulation, or contractual services, until the  
2499 conclusion of the negotiations.

2500       i. Minutes of closed meetings regarding underwriting  
2501 files, and minutes of closed meetings regarding an open claims  
2502 file until termination of all litigation and settlement of all  
2503 claims with regard to that claim, except that information  
2504 otherwise confidential or exempt by law will be redacted.

2505

2506 When an authorized insurer is considering underwriting a risk  
2507 insured by the corporation, relevant underwriting files and  
2508 confidential claims files may be released to the insurer  
2509 provided the insurer agrees in writing, notarized and under  
2510 oath, to maintain the confidentiality of such files. When a file  
2511 is transferred to an insurer that file is no longer a public  
2512 record because it is not held by an agency subject to the  
2513 provisions of the public records law. Underwriting files and  
2514 confidential claims files may also be released to staff of and  
2515 the board of governors of the market assistance plan established  
2516 pursuant to s. 627.3515, who must retain the confidentiality of  
2517 such files, except such files may be released to authorized  
2518 insurers that are considering assuming the risks to which the  
2519 files apply, provided the insurer agrees in writing, notarized  
2520 and under oath, to maintain the confidentiality of such files.

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2521 Finally, the corporation or the board or staff of the market  
2522 assistance plan may make the following information obtained from  
2523 underwriting files and confidential claims files available to  
2524 licensed general lines insurance agents: name, address, and  
2525 telephone number of the residential property owner or insured;  
2526 location of the risk; rating information; loss history; and  
2527 policy type. The receiving licensed general lines insurance  
2528 agent must retain the confidentiality of the information  
2529 received.

2530 2. Portions of meetings of the corporation are exempt from  
2531 the provisions of s. 286.011 and s. 24(b), Art. I of the State  
2532 Constitution wherein confidential underwriting files or  
2533 confidential open claims files are discussed. All portions of  
2534 corporation meetings which are closed to the public shall be  
2535 recorded by a court reporter. The court reporter shall record  
2536 the times of commencement and termination of the meeting, all  
2537 discussion and proceedings, the names of all persons present at  
2538 any time, and the names of all persons speaking. No portion of  
2539 any closed meeting shall be off the record. Subject to the  
2540 provisions hereof and s. 119.07(1)(b)-(d), the court reporter's  
2541 notes of any closed meeting shall be retained by the corporation  
2542 for a minimum of 5 years. A copy of the transcript, less any  
2543 exempt matters, of any closed meeting wherein claims are  
2544 discussed shall become public as to individual claims after  
2545 settlement of the claim.

2546 (o) It is the intent of the Legislature that the  
2547 amendments to this subsection enacted in 2002 should, over time,  
2548 reduce the probable maximum windstorm losses in the residual

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2549 markets and should reduce the potential assessments to be levied  
2550 on property insurers and policyholders statewide. In furtherance  
2551 of this intent:

2552       1. The board shall, on or before February 1 of each year,  
2553 provide a report to the President of the Senate and the Speaker  
2554 of the House of Representatives showing the reduction or  
2555 increase in the 100-year probable maximum loss attributable to  
2556 wind-only coverages and the quota share program under this  
2557 subsection combined, as compared to the benchmark 100-year  
2558 probable maximum loss of the Florida Windstorm Underwriting  
2559 Association. For purposes of this paragraph, the benchmark 100-  
2560 year probable maximum loss of the Florida Windstorm Underwriting  
2561 Association shall be the calculation dated February 2001 and  
2562 based on November 30, 2000, exposures. In order to ensure  
2563 comparability of data, the board shall use the same methods for  
2564 calculating its probable maximum loss as were used to calculate  
2565 the benchmark probable maximum loss. The reduction or increase  
2566 in probable maximum loss shall be calculated without taking into  
2567 account the probable maximum loss attributable to the  
2568 nonhomestead account.

2569       2. Beginning February 1, 2013 ~~2007~~, if the report under  
2570 subparagraph 1. for any year indicates that the 100-year  
2571 probable maximum loss attributable to wind-only coverages and  
2572 the quota share program combined does not reflect a reduction of  
2573 at least 25 percent from the benchmark, the board shall reduce  
2574 the boundaries of the high-risk area eligible for wind-only  
2575 coverages under this subsection in a manner calculated to reduce

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2576 such probable maximum loss to an amount at least 25 percent  
2577 below the benchmark.

2578       3. Beginning February 1, 2018 ~~2012~~, if the report under  
2579 subparagraph 1. for any year indicates that the 100-year  
2580 probable maximum loss attributable to wind-only coverages and  
2581 the quota share program combined does not reflect a reduction of  
2582 at least 50 percent from the benchmark, the boundaries of the  
2583 high-risk area eligible for wind-only coverages under this  
2584 subsection shall be reduced by the elimination of any area that  
2585 is not seaward of a line 1,000 feet inland from the Intracoastal  
2586 Waterway.

2587       (p) In enacting the provisions of this section, the  
2588 Legislature recognizes that both the Florida Windstorm  
2589 Underwriting Association and the Residential Property and  
2590 Casualty Joint Underwriting Association have entered into  
2591 financing arrangements that obligate each entity to service its  
2592 debts and maintain the capacity to repay funds secured under  
2593 these financing arrangements. It is the intent of the  
2594 Legislature that nothing in this section be construed to  
2595 compromise, diminish, or interfere with the rights of creditors  
2596 under such financing arrangements. It is further the intent of  
2597 the Legislature to preserve the obligations of the Florida  
2598 Windstorm Underwriting Association and Residential Property and  
2599 Casualty Joint Underwriting Association with regard to  
2600 outstanding financing arrangements, with such obligations  
2601 passing entirely and unchanged to the corporation and,  
2602 specifically, to the applicable account of the corporation. So  
2603 long as any bonds, notes, indebtedness, or other financing

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2604 obligations of the Florida Windstorm Underwriting Association or  
2605 the Residential Property and Casualty Joint Underwriting  
2606 Association are outstanding, under the terms of the financing  
2607 documents pertaining to them, the governing board of the  
2608 corporation shall have and shall exercise the authority to levy,  
2609 charge, collect, and receive all premiums, assessments,  
2610 surcharges, charges, revenues, and receipts that the  
2611 associations had authority to levy, charge, collect, or receive  
2612 under the provisions of subsection (2) and this subsection,  
2613 respectively, as they existed on January 1, 2002, to provide  
2614 moneys, without exercise of the authority provided by this  
2615 subsection, in at least the amounts, and by the times, as would  
2616 be provided under those former provisions of subsection (2) or  
2617 this subsection, respectively, so that the value, amount, and  
2618 collectability of any assets, revenues, or revenue source  
2619 pledged or committed to, or any lien thereon securing such  
2620 outstanding bonds, notes, indebtedness, or other financing  
2621 obligations will not be diminished, impaired, or adversely  
2622 affected by the amendments made by this act and to permit  
2623 compliance with all provisions of financing documents pertaining  
2624 to such bonds, notes, indebtedness, or other financing  
2625 obligations, or the security or credit enhancement for them, and  
2626 any reference in this subsection to bonds, notes, indebtedness,  
2627 financing obligations, or similar obligations, of the  
2628 corporation shall include like instruments or contracts of the  
2629 Florida Windstorm Underwriting Association and the Residential  
2630 Property and Casualty Joint Underwriting Association to the

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2631 extent not inconsistent with the provisions of the financing  
2632 documents pertaining to them.

2633       (q) The corporation shall not require the securing of  
2634 flood insurance as a condition of coverage if the insured or  
2635 applicant executes a form approved by the office affirming that  
2636 flood insurance is not provided by the corporation and that if  
2637 flood insurance is not secured by the applicant or insured in  
2638 addition to coverage by the corporation, the risk will not be  
2639 covered for flood damage. A corporation policyholder electing  
2640 not to secure flood insurance and executing a form as provided  
2641 herein making a claim for water damage against the corporation  
2642 shall have the burden of proving the damage was not caused by  
2643 flooding. Notwithstanding other provisions of this subsection,  
2644 the corporation may deny coverage to an applicant or insured who  
2645 refuses to execute the form described herein.

2646       (r) A salaried employee of the corporation who performs  
2647 policy administration services subsequent to the effectuation of  
2648 a corporation policy is not required to be licensed as an agent  
2649 under the provisions of s. 626.112.

2650       (s) The transition to homestead and nonhomestead accounts  
2651 shall begin on October 1, 2006. A policy issued on or after that  
2652 date shall be issued in the applicable homestead account or the  
2653 nonhomestead account, based upon whether the property  
2654 constitutes homestead property as provided in subparagraph (b)2.  
2655 A policy in effect on October 1, 2006, shall be placed in the  
2656 applicable homestead account or the nonhomestead account, based  
2657 upon whether the property constitutes homestead property as

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2658 provided in subparagraph (b)2., upon the first renewal of such  
2659 policy after October 1, 2006.

2660 (t) Any employee of the corporation whose position is  
2661 managerial, policymaking, or professional in nature and all  
2662 members of the corporation's board of governors shall comply  
2663 with the Code of Ethics for public officers and employers found  
2664 in ss. 112.311-112.326.

2665 (u) An employee of the corporation shall notify the  
2666 Division of Insurance Fraud within 48 hours after having  
2667 information that would lead a reasonable person to suspect that  
2668 fraud may have been committed by any employee of the  
2669 corporation.

2670 (v) By February 1, 2007, the corporation shall submit a  
2671 report to the President of the Senate, the Speaker of the House  
2672 of Representatives, the minority party leaders of the Senate and  
2673 the House of Representatives, and the chairs of the standing  
2674 committees of the Senate and the House of Representatives having  
2675 jurisdiction over matters relating to property and casualty  
2676 insurance. In preparing the report, the corporation shall  
2677 consult with the Office of Insurance Regulation, the Department  
2678 of Financial Services, and any other party the corporation  
2679 determines is appropriate. The report shall include findings and  
2680 recommendations on the feasibility of requiring authorized  
2681 insurers that issue and service personal and commercial  
2682 residential policies and commercial nonresidential policies that  
2683 provide coverage for basic property perils except for the peril  
2684 of wind to issue and service for a fee personal and commercial  
2685 residential policies and commercial nonresidential policies

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2686 providing coverage for the peril of wind issued by the  
2687 corporation. The report shall include:

2688 1. The expense savings to the corporation of issuing and  
2689 servicing such policies as determined through a cost benefit  
2690 analysis.

2691 2. The expenses and liability to authorized insurers  
2692 associated with issuing and servicing such policies.

2693 3. The impact on service to policyholders of the  
2694 corporation relating to issuing and servicing such policies.

2695 4. The impact on the producing agent of the corporation of  
2696 issuing and servicing such policies.

2697 5. Recommendations as to the amount of the fee that should  
2698 be paid to authorized insurers for issuing and servicing such  
2699 policies.

2700 6. The impact issuing and servicing such policies will  
2701 have on the corporation's number of policies, total insured  
2702 value, and probable maximum loss.

2703 (w) There shall be no liability on the part of, and no  
2704 cause of action of any nature shall arise against, producing  
2705 agents of record or their employees for any action taken by them  
2706 in the performance of their duties or responsibilities relating  
2707 to the removal of policies from the corporation. Such immunity  
2708 only applies to actions that may arise due to differences in  
2709 coverage or procedures between any take-out insurer and the  
2710 corporation or for insolvency of any take-out insurer.

2711 (x) The Legislature finds that the total area eligible for  
2712 the high-risk account of the corporation has a material impact  
2713 on the availability of wind coverage from the voluntary admitted

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2714 market, deficits of the corporation, assessments to be levied on  
2715 property insurers and policyholders statewide, the ability and  
2716 willingness of authorized insurers to write wind coverage in the  
2717 high-risk areas, the probable maximum windstorm losses of the  
2718 corporation, general commerce in coastal areas, and the overall  
2719 financial condition of the state. Therefore, in furtherance of  
2720 these findings and intent:

- 2721 1. The High Risk Eligibility Panel is created.  
2722 2. The members of the panel shall be appointed as follows:  
2723 a. The board shall appoint two board members.  
2724 b. The Governor shall appoint one member.  
2725 c. The Chief Financial Officer shall appoint one member.  
2726 d. The Commissioner of Insurance Regulation shall appoint  
2727 a representative of the office to serve as a member.  
2728 e. The President of the Senate shall appoint one member.  
2729 f. The Speaker of the House of Representatives shall  
2730 appoint one member.

2731  
2732 Members of the panel must be residents of this state with  
2733 insurance expertise. Members shall elect a chair and shall serve  
2734 3-year terms each. The panel shall operate independently of any  
2735 state agency and shall be administered by the corporation. The  
2736 panel shall make an annual report to the President of the Senate  
2737 and the Speaker of the House of Representatives on or before  
2738 February 1 of each year recommending the areas that should be  
2739 eligible for the high-risk account of the corporation. Members  
2740 shall not receive compensation and are not entitled to receive

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2741 reimbursement for per diem and travel expenses as provided in s.  
2742 112.061, except for any panel member who is a state employee.

2743 3. The Legislature's intent provided in subparagraphs  
2744 (a)1. and 2. shall provide guidance for the panel to use in the  
2745 panel's recommendations to the Legislature required in  
2746 subparagraph 1. The panel shall consider the following factors  
2747 in fulfilling its responsibilities under this paragraph:

2748 a. The number of commercial risks in a given area that are  
2749 unable to find wind coverage from the voluntary admitted market.

2750 b. Reports from members of the mortgage industry  
2751 indicating difficulty in finding forced placed policies for  
2752 commercial wind coverage.

2753 c. The number of approved excess and surplus lines  
2754 carriers certifying an unwillingness to provide commercial wind  
2755 coverage similar to that approved for use by the office for the  
2756 voluntary admitted market.

2757 d. Other relevant factors.

2758  
2759 The office and the corporation shall provide the panel with any  
2760 information the panel considers necessary to determine areas  
2761 eligible for the high-risk account of the corporation. For the  
2762 purpose of making accurate determinations for areas eligible for  
2763 the high-risk account of the corporation, the panel may  
2764 interview and request and receive information from residents of  
2765 this state in areas impacted by this paragraph, including, but  
2766 not limited to, insurance agents, insurance companies,  
2767 actuaries, and other insurance professionals. Upon request of

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2768    the panel, the office may conduct public hearings in areas that  
2769    may be impacted by the panel's recommendations.

2770        4. Notwithstanding other provisions of this paragraph, the  
2771    panel shall conduct an analysis to determine the areas to be  
2772    eligible for the high-risk account of the corporation for any  
2773    county that contains an eligible area extending more than 2  
2774    miles from the coast, any coastal county that does not have  
2775    areas designated as eligible for the high-risk account, and  
2776    counties with barrier islands whether or not such islands or  
2777    portions of such islands are currently eligible for the high  
2778    risk account. The panel shall submit a report, including its  
2779    analysis, to the office and to the corporation by November 30,  
2780    2006. The report shall specify changes to the areas eligible for  
2781    the high-risk account for such affected counties based on its  
2782    analysis.

2783        Section 10. Paragraph (b) of subsection (3) of section  
2784    627.4035, Florida Statutes, is amended, and subsection (4) is  
2785    added to that section, to read:

2786        627.4035    Cash payment of premiums; claims.--

2787        (3)    All payments of claims made in this state under any  
2788    contract of insurance shall be paid:

2789        (b)    If authorized in writing by the recipient or the  
2790    recipient's representative, by debit card or any other form of  
2791    electronic transfer. Any fees or costs to be charged against the  
2792    recipient must be disclosed in writing to the recipient or the  
2793    recipient's representative at the time of written authorization.  
2794    However, the written authorization requirement may be waived by  
2795    the recipient or the recipient's representative if the insurer

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2796 verifies the identity of the insured or the insured's recipient  
2797 and does not charge a fee for the transaction. If the funds are  
2798 misdirected, the insurer would remain liable for the payment of  
2799 the claim.

2800 (4) Nothing in this section shall be construed as  
2801 prohibiting an insurer from limiting its liability under a  
2802 policy or endorsement providing that loss will be adjusted on  
2803 the basis of replacement costs to the lesser of:

2804 (a) The limit of liability shown on the policy  
2805 declarations page;

2806 (b) The reasonable and necessary cost to repair the  
2807 damaged, destroyed, or stolen covered property; or

2808 (c) The reasonable and necessary cost to replace the  
2809 damaged, destroyed, or stolen covered property.

2810 Section 11. Subsections (2) and (3) of section 627.7011,  
2811 Florida Statutes, are amended, and subsection (6) is added to  
2812 that section, to read:

2813 627.7011 Homeowners' policies; offer of replacement cost  
2814 coverage and law and ordinance coverage.--

2815 (2) Unless the insurer obtains the policyholder's written  
2816 refusal of the policies or endorsements specified in subsection  
2817 (1), any policy covering the dwelling is deemed to include the  
2818 law and ordinance coverage limited to 25 percent of the dwelling  
2819 limit specified in paragraph (1)(b). The rejection or selection  
2820 of alternative coverage shall be made on a form approved by the  
2821 office. The form shall fully advise the applicant of the nature  
2822 of the coverage being rejected. If this form is signed by a  
2823 named insured, it will be conclusively presumed that there was

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2824 an informed, knowing rejection of the coverage or election of  
2825 the alternative coverage on behalf of all insureds. Unless the  
2826 policyholder requests in writing the coverage specified in this  
2827 section, it need not be provided in or supplemental to any other  
2828 policy that renews, insures, extends, changes, supersedes, or  
2829 replaces an existing policy when the policyholder has rejected  
2830 the coverage specified in this section or has selected  
2831 alternative coverage. The insurer must provide such policyholder  
2832 with notice of the availability of such coverage in a form  
2833 approved by the office at least once every 3 years. The failure  
2834 to provide such notice constitutes a violation of this code, but  
2835 does not affect the coverage provided under the policy.

2836       (3) In the event of a loss for which a dwelling ~~or~~  
2837 ~~personal property~~ is insured on the basis of replacement costs,  
2838 the insurer shall pay the replacement cost without reservation  
2839 or holdback of any depreciation in value, whether or not the  
2840 insured replaces or repairs the dwelling ~~or property~~.

2841       (6) Insurers shall issue separate checks for living  
2842 expenses, contents, and casualty proceeds. Checks for living  
2843 expenses and contents should be issued directly to the  
2844 policyholder.

2845       Section 12. Effective upon this act becoming a law,  
2846 section 627.7019, Florida Statutes, is created to read:

2847       627.7019 Standardization of requirements applicable to  
2848 insurers after natural disasters.--

2849       (1) The commission shall adopt by rule, pursuant to s.  
2850 120.54(1)-(3), standardized requirements that may be applied to

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2851 insurers as a consequence of a hurricane or other natural  
 2852 disaster. The rules shall address the following areas:  
 2853 (a) Claims reporting requirements.  
 2854 (b) Grace periods for payment of premiums and performance  
 2855 of other duties by insureds.  
 2856 (c) Temporary postponement of cancellations and  
 2857 nonrenewals.  
 2858 (2) The rules adopted pursuant to this section shall  
 2859 require the office to issue an order within 72 hours after the  
 2860 occurrence of a hurricane or other natural disaster specifying,  
 2861 by line of insurance, which of the standardized requirements  
 2862 apply, the geographic areas in which they apply, the time at  
 2863 which applicability commences, and the time at which  
 2864 applicability terminates.  
 2865 (3) The commission and the office may not adopt an  
 2866 emergency rule under s. 120.54(4) in conflict with any provision  
 2867 of the rules adopted under this section.  
 2868 (4) The commission shall initiate rulemaking under this  
 2869 section no later than June 1, 2006.  
 2870 Section 13. Subsection (5) of section 627.727, Florida  
 2871 Statutes, is amended to read:  
 2872 627.727 Motor vehicle insurance; uninsured and  
 2873 underinsured vehicle coverage; insolvent insurer protection.--  
 2874 (5) Any person having a claim against an insolvent insurer  
 2875 as defined in s. 631.54(6)~~(5)~~ under the provisions of this  
 2876 section shall present such claim for payment to the Florida  
 2877 Insurance Guaranty Association only. In the event of a payment  
 2878 to any person in settlement of a claim arising under the

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2879 provisions of this section, the association is not subrogated or  
2880 entitled to any recovery against the claimant's insurer. The  
2881 association, however, has the rights of recovery as set forth in  
2882 chapter 631 in the proceeds recoverable from the assets of the  
2883 insolvent insurer.

2884       Section 14. Paragraph (f) is added to subsection (2) of  
2885 section 631.181, Florida Statutes, to read:

2886           631.181 Filing and proof of claim.--

2887           (2)

2888           (f) The signed statement required by this section shall  
2889 not be required on claims for which adequate claims file  
2890 documentation exists within the records of the insolvent  
2891 insurer. Claims for payment of unearned premium shall not be  
2892 required to use the signed statement required by this section if  
2893 the receiver certifies to the guaranty fund that the records of  
2894 the insolvent insurer are sufficient to determine the amount of  
2895 unearned premium owed to each policyholder of the insurer and  
2896 such information is remitted to the guaranty fund by the  
2897 receiver in electronic or other mutually agreed-upon format.

2898       Section 15. Subsections (5), (6), (7), and (8) of section  
2899 631.54, Florida Statutes, are renumbered as subsections (6),  
2900 (7), (8), and (9), respectively, and a new subsection (5) is  
2901 added to that section, to read:

2902           631.54 Definitions.--As used in this part:

2903           (5) "Homeowner's insurance" means personal lines  
2904 residential property insurance coverage that consists of the  
2905 type of coverage provided under homeowner's, dwelling, and  
2906 similar policies for repair or replacement of the insured

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2907   structure and contents, which policies are written directly to  
2908   the individual homeowner. Residential coverage for personal  
2909   lines as set forth in this section includes policies that  
2910   provide coverage for particular perils such as windstorm and  
2911   hurricane coverage but excludes all coverage for mobile homes,  
2912   renter's insurance, or tenant's coverage. The term "homeowner's  
2913   insurance" excludes commercial residential policies covering  
2914   condominium associations or homeowners' associations, which  
2915   associations have a responsibility to provide insurance coverage  
2916   on residential units within the association, and also excludes  
2917   coverage for the common elements of a homeowners' association.

2918   Section 16. Subsection (1) of section 631.55, Florida  
2919   Statutes, is amended to read:

2920   631.55   Creation of the association.--

2921   (1)   There is created a nonprofit corporation to be known  
2922   as the "Florida Insurance Guaranty Association, Incorporated."  
2923   All insurers defined as member insurers in s. 631.54 ~~(7)~~ ~~(6)~~ shall  
2924   be members of the association as a condition of their authority  
2925   to transact insurance in this state, and, further, as a  
2926   condition of such authority, an insurer shall agree to reimburse  
2927   the association for all claim payments the association makes on  
2928   said insurer's behalf if such insurer is subsequently  
2929   rehabilitated. The association shall perform its functions under  
2930   a plan of operation established and approved under s. 631.58 and  
2931   shall exercise its powers through a board of directors  
2932   established under s. 631.56. The corporation shall have all  
2933   those powers granted or permitted nonprofit corporations, as  
2934   provided in chapter 617.



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2935           Section 17. Paragraph (a) of subsection (1), paragraph (d)  
2936 of subsection (2), and paragraph (a) of subsection (3) of  
2937 section 631.57, Florida Statutes, are amended, and paragraph (e)  
2938 is added to subsection (3) of that section, to read:

2939           631.57 Powers and duties of the association.--

2940           (1) The association shall:

2941           (a)1. Be obligated to the extent of the covered claims  
2942 existing:

2943           a. Prior to adjudication of insolvency and arising within  
2944 30 days after the determination of insolvency;

2945           b. Before the policy expiration date if less than 30 days  
2946 after the determination; or

2947           c. Before the insured replaces the policy or causes its  
2948 cancellation, if she or he does so within 30 days of the  
2949 determination.

2950           2. The obligation under subparagraph 1. shall include only  
2951 the amount of each covered claim that is in excess of \$100 and  
2952 is less than \$300,000, except policies providing coverage for  
2953 homeowner's insurance shall provide for an additional \$200,000  
2954 for the portion of a covered claim that relates only to the  
2955 damage to the structure and contents.

2956           3.a.2- Notwithstanding subparagraph 2., the obligation  
2957 under subparagraph 1. for shall include only that amount of each  
2958 covered claim which is in excess of \$100 and is less than  
2959 \$300,000, except with respect to policies covering condominium  
2960 associations or homeowners' associations, which associations  
2961 have a responsibility to provide insurance coverage on  
2962 residential units within the association, the obligation shall

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2963 include that amount of each covered property insurance claim  
2964 which is less than \$100,000 multiplied by the number of  
2965 condominium units or other residential units; however, as to  
2966 homeowners' associations, this sub-subparagraph ~~subparagraph~~  
2967 applies only to claims for damage or loss to residential units  
2968 and structures attached to residential units.

2969       b. Notwithstanding sub-subparagraph a., the association  
2970 has no obligation to pay covered claims that are to be paid from  
2971 the proceeds of bonds issued under s. 631.695. However, the  
2972 association shall assign and pledge the first available moneys  
2973 from all or part of the assessments to be made under paragraph  
2974 (3) (a) to or on behalf of the issuer of such bonds for the  
2975 benefit of the holders of such bonds. The association shall  
2976 administer any such covered claims and present valid covered  
2977 claims for payment in accordance with the provisions of the  
2978 assistance program in connection with which such bonds have been  
2979 issued.

2980       3. In no event shall the association be obligated to a  
2981 policyholder or claimant in an amount in excess of the  
2982 obligation of the insolvent insurer under the policy from which  
2983 the claim arises.

2984       (2) The association may:

2985       (d) Negotiate and become a party to such contracts as are  
2986 necessary to carry out the purpose of this part. Additionally,  
2987 the association may enter into such contracts with a  
2988 municipality, a county, or a legal entity created pursuant to s.  
2989 163.01(7) (g) as are necessary in order for the municipality,  
2990 county, or legal entity to issue bonds under s. 631.695. In

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2991 connection with the issuance of any such bonds and the entering  
2992 into of any such necessary contracts, the association may agree  
2993 to such terms and conditions as the association deems necessary  
2994 and proper.

2995       (3) (a) To the extent necessary to secure the funds for the  
2996 respective accounts for the payment of covered claims, and also  
2997 to pay the reasonable costs to administer the same, and to the  
2998 extent necessary to secure the funds for the account specified  
2999 in s. 631.55(2)(c) or to retire indebtedness, including, without  
3000 limitation, the principal, redemption premium, if any, and  
3001 interest on, and related costs of issuance of, bonds issued  
3002 under s. 631.695 and the funding of any reserves and other  
3003 payments required under the bond resolution or trust indenture  
3004 pursuant to which such bonds have been issued, the office, upon  
3005 certification of the board of directors, shall levy assessments  
3006 in the proportion that each insurer's net direct written  
3007 premiums in this state in the classes protected by the account  
3008 bears to the total of said net direct written premiums received  
3009 in this state by all such insurers for the preceding calendar  
3010 year for the kinds of insurance included within such account.  
3011 Assessments shall be remitted to and administered by the board  
3012 of directors in the manner specified by the approved plan. Each  
3013 insurer so assessed shall have at least 30 days' written notice  
3014 as to the date the assessment is due and payable. Every  
3015 assessment shall be made as a uniform percentage applicable to  
3016 the net direct written premiums of each insurer in the kinds of  
3017 insurance included within the account in which the assessment is  
3018 made. The assessments levied against any insurer shall not

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3019 exceed in any one year more than 2 percent of that insurer's net  
3020 direct written premiums in this state for the kinds of insurance  
3021 included within such account during the calendar year next  
3022 preceding the date of such assessments.

3023 (e)1.a. In addition to assessments otherwise authorized in  
3024 paragraph (a) and to the extent necessary to secure the funds  
3025 for the account specified in s. 631.55(2)(c) or to retire  
3026 indebtedness, including, without limitation, the principal,  
3027 redemption premium, if any, and interest on, and related costs  
3028 of issuance of, bonds issued under s. 631.695 and the funding of  
3029 any reserves and other payments required under the bond  
3030 resolution or trust indenture pursuant to which such bonds have  
3031 been issued, the office, upon certification of the board of  
3032 directors, shall levy emergency assessments upon insurers  
3033 holding a certificate of authority. The emergency assessments  
3034 payable under this paragraph by any insurer shall not exceed in  
3035 any single year more than 2 percent of that insurer's direct  
3036 written premiums, net of refunds, in this state during the  
3037 preceding calendar year for the kinds of insurance within the  
3038 account specified in s. 631.55(2)(c).

3039 b. Any emergency assessments authorized under this  
3040 paragraph shall be levied by the office upon insurers referred  
3041 to in sub-subparagraph a., upon certification as to the need for  
3042 such assessments by the board of directors, in each year that  
3043 bonds issued under s. 631.695 and secured by such emergency  
3044 assessments are outstanding, in such amounts up to such 2-  
3045 percent limit as required in order to provide for the full and  
3046 timely payment of the principal of, redemption premium, if any,

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and interest on, and related costs of issuance of, such bonds.  
The emergency assessments provided for in this paragraph are assigned and pledged to the municipality, county, or legal entity issuing bonds under s. 631.695 for the benefit of the holders of such bonds, in order to enable such municipality, county, or legal entity to provide for the payment of the principal of, redemption premium, if any, and interest on such bonds, the cost of issuance of such bonds, and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, without the necessity of any further action by the association, the office, or any other party. To the extent bonds are issued under s. 631.695 and the association determines to secure such bonds by a pledge of revenues received from the emergency assessments, such bonds, upon such pledge of revenues, shall be secured by and payable from the proceeds of such emergency assessments, and the proceeds of emergency assessments levied under this paragraph shall be remitted directly to and administered by the trustee or custodian appointed for such bonds.

c. Emergency assessments under this paragraph may be payable in a single payment or, at the option of the association, may be payable in 12 monthly installments with the first installment being due and payable at the end of the month after an emergency assessment is levied and subsequent installments being due not later than the end of each succeeding month.

d. If emergency assessments are imposed, the report

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3075 required by s. 631.695(7) shall include an analysis of the  
3076 revenues generated from the emergency assessments imposed under  
3077 this paragraph.

3078 e. If emergency assessments are imposed, the references in  
3079 sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to  
3080 assessments levied under paragraph (a) shall include emergency  
3081 assessments imposed under this paragraph.

3082 2. In order to ensure that insurers paying emergency  
3083 assessments levied under this paragraph continue to charge rates  
3084 that are neither inadequate nor excessive, within 90 days after  
3085 being notified of such assessments, each insurer that is to be  
3086 assessed pursuant to this paragraph shall submit a rate filing  
3087 for coverage included within the account specified in s.  
3088 631.55(2)(c) and for which rates are required to be filed under  
3089 s. 627.062. If the filing reflects a rate change that, as a  
3090 percentage, is equal to the difference between the rate of such  
3091 assessment and the rate of the previous year's assessment under  
3092 this paragraph, the filing shall consist of a certification so  
3093 stating and shall be deemed approved when made. Any rate change  
3094 of a different percentage shall be subject to the standards and  
3095 procedures of s. 627.062.

3096 3. An annual assessment under this paragraph shall  
3097 continue while the bonds issued with respect to which the  
3098 assessment was imposed are outstanding, including any bonds the  
3099 proceeds of which were used to refund bonds issued pursuant to  
3100 s. 631.695, unless adequate provision has been made for the  
3101 payment of the bonds in the documents authorizing the issuance  
3102 of such bonds.

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3103        4. Emergency assessments under this paragraph are not  
3104 premium and are not subject to the premium tax, to any fees, or  
3105 to any commissions. An insurer is liable for all emergency  
3106 assessments that the insurer collects and shall treat the  
3107 failure of an insured to pay an emergency assessment as a  
3108 failure to pay the premium. An insurer is not liable for  
3109 uncollectible emergency assessments.

3110        Section 18. Section 631.695, Florida Statutes, is created  
3111 to read:

3112        631.695 Revenue bond issuance through counties or  
3113 municipalities.--

3114        (1) The Legislature finds:

3115        (a) The potential for widespread and massive damage to  
3116 persons and property caused by hurricanes making landfall in  
3117 this state can generate insurance claims of such a number as to  
3118 render numerous insurers operating within this state insolvent  
3119 and therefore unable to satisfy covered claims.

3120        (b) The inability of insureds within this state to receive  
3121 payment of covered claims or to timely receive such payment  
3122 creates financial and other hardships for such insureds and  
3123 places undue burdens on the state, the affected units of local  
3124 government, and the community at large.

3125        (c) In addition, the failure of insurers to pay covered  
3126 claims or to timely pay such claims due to the insolvency of  
3127 such insurers can undermine the public's confidence in insurers  
3128 operating within this state, thereby adversely affecting the  
3129 stability of the insurance industry in this state.

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3130        (d) The state has previously taken action to address these  
3131 problems by adopting the Florida Insurance Guaranty Association  
3132 Act, which, among other things, provides a mechanism for the  
3133 payment of covered claims under certain insurance policies to  
3134 avoid excessive delay in payment and to avoid financial loss to  
3135 claimants or policyholders because of the insolvency of an  
3136 insurer.

3137        (e) In the wake of the unprecedented destruction caused by  
3138 various hurricanes that have made landfall in this state, the  
3139 resultant covered claims, and the number of insurers rendered  
3140 insolvent thereby, make it evident that alternative programs  
3141 must be developed to allow the Florida Insurance Guaranty  
3142 Association to more expeditiously and effectively provide for  
3143 the payment of covered claims.

3144        (f) It is therefore determined to be in the best interests  
3145 of, and necessary for, the protection of the public health,  
3146 safety, and general welfare of the residents of this state and  
3147 for the protection and preservation of the economic stability of  
3148 insurers operating in this state and it is declared to be an  
3149 essential public purpose to permit certain municipalities and  
3150 counties to take such actions as will provide relief to  
3151 claimants and policyholders having covered claims against  
3152 insolvent insurers operating in this state by expediting the  
3153 handling and payment of covered claims.

3154        (g) To achieve the foregoing purposes, it is proper to  
3155 authorize municipalities and counties of this state  
3156 substantially affected by the landfall of a hurricane to issue  
3157 bonds to assist the Florida Insurance Guaranty Association in



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3158 expediting the handling and payment of covered claims of  
3159 insolvent insurers.

3160 (h) In order to avoid the needless and indiscriminate  
3161 proliferation, duplication, and fragmentation of such assistance  
3162 programs, it is in the best interests of the residents of this  
3163 state to authorize municipalities and counties severely affected  
3164 by a hurricane to provide for the payment of covered claims  
3165 beyond their territorial limits in the implementation of such  
3166 programs.

3167 (i) It is a paramount public purpose for municipalities  
3168 and counties substantially affected by the landfall of a  
3169 hurricane to be able to issue bonds for the purposes described  
3170 in this section. Such issuance shall provide assistance to  
3171 residents of those municipalities and counties as well as to  
3172 other residents of this state.

3173 (2) The governing body of any municipality or county, the  
3174 residents of which have been substantially affected by a  
3175 hurricane, may issue bonds to fund an assistance program in  
3176 conjunction with, and with the consent of, the Florida Insurance  
3177 Guaranty Association for the purpose of paying claimants' or  
3178 policyholders' covered claims, as defined in s. 631.54, arising  
3179 through the insolvency of an insurer, which insolvency is  
3180 determined by the Florida Insurance Guaranty Association to have  
3181 been a result of a hurricane, regardless of whether the  
3182 claimants or policyholders are residents of such municipality or  
3183 county or the property to which the claim relates is located  
3184 within or outside the territorial jurisdiction of the  
3185 municipality or county. The power of a municipality or county to

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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3186 issue bonds, as described in this section, is in addition to any  
 3187 powers granted by law and may not be abrogated or restricted by  
 3188 any provisions in such municipality's or county's charter. A  
 3189 municipality or county issuing bonds for this purpose shall  
 3190 enter into such contracts with the Florida Insurance Guaranty  
 3191 Association or any entity acting on behalf of the Florida  
 3192 Insurance Guaranty Association as are necessary to implement the  
 3193 assistance program. Any bonds issued by a municipality or county  
 3194 or a combination thereof under this subsection shall be payable  
 3195 from and secured by moneys received by or on behalf of the  
 3196 municipality or county from assessments levied under s.  
 3197 631.57(3) (a) and assigned and pledged to or on behalf of the  
 3198 municipality or county for the benefit of the holders of the  
 3199 bonds in connection with the assistance program. The funds,  
 3200 credit, property, and taxing power of the state or any  
 3201 municipality or county shall not be pledged for the payment of  
 3202 such bonds.

3203       (3) Bonds may be validated by the municipality or county  
 3204 pursuant to chapter 75. The proceeds of the bonds may be used to  
 3205 pay covered claims of insolvent insurers; to refinance or  
 3206 replace previously existing borrowings or financial  
 3207 arrangements; to pay interest on bonds; to fund reserves for the  
 3208 bonds; to pay expenses incident to the issuance or sale of any  
 3209 bond issued under this section, including costs of validating,  
 3210 printing, and delivering the bonds, costs of printing the  
 3211 official statement, costs of publishing notices of sale of the  
 3212 bonds, costs of obtaining credit enhancement or liquidity  
 3213 support, and related administrative expenses; or for such other

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3214 purposes related to the financial obligations of the fund as the  
3215 association may determine. The term of the bonds may not exceed  
3216 30 years.

3217 (4) The state covenants with holders of bonds of the  
3218 assistance program that the state will not take any action that  
3219 will have a material adverse effect on the holders and will not  
3220 repeal or abrogate the power of the board of directors of the  
3221 association to direct the Office of Insurance Regulation to levy  
3222 the assessments and to collect the proceeds of the revenues  
3223 pledged to the payment of the bonds as long as any of the bonds  
3224 remain outstanding, unless adequate provision has been made for  
3225 the payment of the bonds in the documents authorizing the  
3226 issuance of the bonds.

3227 (5) The accomplishment of the authorized purposes of such  
3228 municipality or county under this section is in all respects for  
3229 the benefit of the people of the state, for the increase of  
3230 their commerce and prosperity, and for the improvement of their  
3231 health and living conditions. The municipality or county, in  
3232 performing essential governmental functions in accomplishing its  
3233 purposes, is not required to pay any taxes or assessments of any  
3234 kind whatsoever upon any property acquired or used by the county  
3235 or municipality for such purposes or upon any revenues at any  
3236 time received by the county or municipality. The bonds, notes,  
3237 and other obligations of the municipality or county and the  
3238 transfer of and income from such bonds, notes, and other  
3239 obligations, including any profits made on the sale of such  
3240 bonds, notes, and other obligations, are exempt from taxation of  
3241 any kind by the state or by any political subdivision or other

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3242 agency or instrumentality of the state. The exemption granted in  
3243 this subsection is not applicable to any tax imposed by chapter  
3244 220 on interest, income, or profits on debt obligations owned by  
3245 corporations.

3246 (6) Two or more municipalities or counties, the residents  
3247 of which have been substantially affected by a hurricane, may  
3248 create a legal entity pursuant to s. 163.01(7)(g) to exercise  
3249 the powers described in this section as well as those powers  
3250 granted in s. 163.01(7)(g). References in this section to a  
3251 municipality or county includes such legal entity.

3252 (7) The association shall issue an annual report on the  
3253 status of the use of bond proceeds as related to insolvencies  
3254 caused by hurricanes. The report must contain the number and  
3255 amount of claims paid. The association shall also include an  
3256 analysis of the revenue generated from the assessment levied  
3257 under s. 631.57(3)(a) to pay such bonds. The association shall  
3258 submit a copy of the report to the President of the Senate, the  
3259 Speaker of the House of Representatives, and the Chief Financial  
3260 Officer within 90 days after the end of each calendar year in  
3261 which bonds were outstanding.

3262 Section 19. No provision of s. 631.57 or s. 631.695,  
3263 Florida Statutes, shall be repealed until such time as the  
3264 principal, redemption premium, if any, and interest on all bonds  
3265 issued under s. 631.695, Florida Statutes, payable and secured  
3266 from assessments levied under s. 631.57(3)(a), Florida Statutes,  
3267 have been paid in full or adequate provision for such payment  
3268 has been made in accordance with the bond resolution or trust  
3269 indenture pursuant to which the bonds were issued.

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3270           Section 20. Paragraph (a) of subsection (1) of section  
3271   817.234, Florida Statutes, is amended to read:

3272           817.234 False and fraudulent insurance claims.--

3273           (1) (a) A person commits insurance fraud punishable as  
3274   provided in subsection (11) if that person, with the intent to  
3275   injure, defraud, or deceive any insurer:

3276           1. Presents or causes to be presented any written or oral  
3277   statement as part of, or in support of, a claim for payment or  
3278   other benefit pursuant to an insurance policy or a health  
3279   maintenance organization subscriber or provider contract,  
3280   knowing that such statement contains any false, incomplete, or  
3281   misleading information concerning any fact or thing material to  
3282   such claim;

3283           2. Prepares or makes any written or oral statement that is  
3284   intended to be presented to any insurer in connection with, or  
3285   in support of, any claim for payment or other benefit pursuant  
3286   to an insurance policy or a health maintenance organization  
3287   subscriber or provider contract, knowing that such statement  
3288   contains any false, incomplete, or misleading information  
3289   concerning any fact or thing material to such claim; or

3290           3.a. Knowingly presents, causes to be presented, or  
3291   prepares or makes with knowledge or belief that it will be  
3292   presented to any insurer, purported insurer, servicing  
3293   corporation, insurance broker, or insurance agent, or any  
3294   employee or agent thereof, any false, incomplete, or misleading  
3295   information or written or oral statement as part of, or in  
3296   support of, an application for the issuance of, or the rating  
3297   of, any insurance policy, or a health maintenance organization

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3298 subscriber or provider contract, including any false declaration  
3299 of homestead status for the purpose of obtaining coverage in a  
3300 homestead account under s. 627.351(6); or

3301 b. Who knowingly conceals information concerning any fact  
3302 material to such application.

3303 Section 21. Task Force on Hurricane Mitigation and  
3304 Hurricane Insurance for Mobile and Manufactured Homes.--

3305 (1) TASK FORCE CREATED.--There is created the Task Force  
3306 on Hurricane Mitigation and Hurricane Insurance for Mobile and  
3307 Manufactured Homes.

3308 (2) ADMINISTRATION.--The task force shall be  
3309 administratively housed within the Office of Insurance  
3310 Regulation but shall operate independently of any state officer  
3311 or agency. The office shall provide such administrative support  
3312 as the task force deems necessary to accomplish its mission and  
3313 shall provide necessary funding for the task force within the  
3314 office's existing resources. The Executive Office of the  
3315 Governor, the Department of Financial Services, the Office of  
3316 Insurance Regulation, the Department of Highway Safety and Motor  
3317 Vehicles, and the Department of Community Affairs shall provide  
3318 substantive staff support for the task force.

3319 (3) MEMBERSHIP.--The members of the task force shall be  
3320 appointed as follows:

3321 (a) The Governor shall appoint two members who have  
3322 expertise in financial matters, one of whom is a representative  
3323 of the mobile or manufactured home industry and one of whom is a  
3324 representative of insurance consumers.

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3325        (b) The Chief Financial Officer shall appoint two members  
3326 who have expertise in financial matters, one of whom is a  
3327 representative of a property insurer writing mobile or  
3328 manufactured homeowners insurance in this state and one of whom  
3329 is a representative of insurance agents.

3330        (c) The President of the Senate shall appoint one member.

3331        (d) The Speaker of the House of Representatives shall  
3332 appoint one member.

3333        (e) The Commissioner of Insurance Regulation or his or her  
3334 designee shall serve as an ex officio voting member of the task  
3335 force.

3336        (f) The Executive Director of Citizens Property Insurance  
3337 or his or her designee shall serve as an ex officio voting  
3338 member of the task force.

3339        (g) The Chief Executive Officer of the Federal Alliance  
3340 for Safe Homes, Incorporated or his or her designee shall serve  
3341 as an ex officio voting member of the task force.

3342  
3343 Members of the task force shall serve without compensation but  
3344 may receive reimbursement for per diem and travel expenses as  
3345 provided in s. 112.061, Florida Statutes.

3346        (4) PURPOSE AND INTENT.--The Legislature recognizes the  
3347 continued availability of hurricane insurance coverage for  
3348 mobile and manufactured home owners in this state is essential  
3349 to the state's economic survival. The Legislature further  
3350 recognizes hurricane mitigation measures and building codes may  
3351 reduce the likelihood or amount of damage to mobile or  
3352 manufactured homes in the event of a hurricane. The Legislature

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3353 further recognizes mobile and manufactured homes provide safe  
 3354 and affordable housing to many residents of this state. The  
 3355 purpose of the task force is to make recommendations to the  
 3356 legislative and executive branches of this state's government  
 3357 relating to the creation and maintenance of insurance capacity  
 3358 in the private sector and public sector that is sufficient to  
 3359 ensure that all mobile and manufactured home owners in this  
 3360 state are able to obtain appropriate insurance coverage for  
 3361 hurricane losses and relating to the effectiveness of hurricane  
 3362 mitigation measures for mobile or manufactured homes as further  
 3363 described in this section.

3364 (5) SPECIFIC TASKS.--The task force shall conduct such  
 3365 research and hearings as the task force deems necessary to  
 3366 achieve the purposes specified in subsection (4) and shall  
 3367 develop information on relevant issues, including, but not  
 3368 limited to, the following issues:

3369 (a) Whether this state currently has sufficient hurricane  
 3370 insurance capacity for mobile and manufactured homes to ensure  
 3371 the continuation of a healthy, competitive marketplace, taking  
 3372 into consideration private-sector and public-sector resources.

3373 (b) Identifying the future demands on the hurricane  
 3374 insurance capacity of this state, taking into account population  
 3375 growth, coastal growth, and anticipated future hurricane  
 3376 activity.

3377 (c) Identifying how many mobile or manufactured homes are  
 3378 occupied in this state, how many mobile or manufactured homes  
 3379 are occupied by owners who also own the land to which the unit



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3380 is attached, the age or average age of mobile or manufactured  
3381 homes, the location of such homes, and the size of such homes.

3382 (d) The extent to which the growth in insurance on mobile  
3383 or manufactured homes in Citizens Property Insurance Corporation  
3384 is attributable to insufficient insurance capacity.

3385 (e) The extent to which the growth trends of Citizens  
3386 Property Insurance Corporation create long-term problems for  
3387 mobile and manufactured home owners in this state and for other  
3388 persons and businesses that depend on a viable market.

3389 (f) The extent to which insurance discounts, credits, or  
3390 other rate differentials or reductions in the hurricane  
3391 insurance deductible for a mobile or manufactured homeowner who  
3392 takes mitigative measures would increase hurricane insurance  
3393 capacity for mobile or manufactured homeowners.

3394 (g) The extent hurricane mitigation enhancements to mobile  
3395 or manufactured homes decreases the likelihood of damage from a  
3396 hurricane or decreases the amount of damage from a hurricane.

3397 (h) The extent to which the building codes reduce the  
3398 likelihood of damage or amount of damage to mobile or  
3399 manufactured homes.

3400 (6) REPORT AND RECOMMENDATIONS.--By January 1, 2007, the  
3401 task force shall provide a report containing findings relating  
3402 to the tasks identified in subsection (5) and recommendations  
3403 consistent with the purposes of this section and also consistent  
3404 with such findings. The task force shall submit the report to  
3405 the Governor, the Chief Financial Officer, the President of the  
3406 Senate, and the Speaker of the House of Representatives. The

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3407 task force may also submit such interim reports as the task  
3408 force deems appropriate.

3409 (7) EXPIRATION.--The task force shall expire on January 2,  
3410 2007.

3411 Section 22. By January 1, 2007, the Office of Insurance  
3412 Regulation shall submit a report to the President of the Senate,  
3413 the Speaker of the House of Representatives, the minority party  
3414 leaders of the Senate and the House of Representatives, and the  
3415 chairs of the standing committees of the Senate and the House of  
3416 Representatives having jurisdiction over matters relating to  
3417 property and casualty insurance. In preparing the report, the  
3418 office shall consult with the Department of Highway Safety and  
3419 Motor Vehicles, the Department of Community Affairs, the Florida  
3420 Building Commission, the Florida Home Builders Association,  
3421 representatives of the mobile and manufactured home industry,  
3422 representatives of the property and casualty insurance industry,  
3423 and any other party the office determines is appropriate. The  
3424 report shall include findings and recommendations on the  
3425 insurability of attached or free standing structures to  
3426 residential homes, mobile, or manufactured homes, such as  
3427 carports or pool enclosures; the increase or decrease in  
3428 insurance costs associated with insuring such structures; the  
3429 feasibility of insuring such structures; the impact on  
3430 homeowners of not having insurance coverage for such structures;  
3431 the ability of mitigation measures relating to such structures  
3432 to reduce risk and loss; and such other related information as  
3433 the office determines is appropriate for the Legislature to  
3434 consider.

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Section 23. (1) By January 15, 2007, the Office of Insurance Regulation shall submit a report to the President of the Senate, the Speaker of the House of Representatives, the minority party leaders of the Senate and the House of Representatives, and the chairs of the standing committees of the Senate and the House of Representatives having jurisdiction over matters relating to property and casualty insurance. The report shall include findings and recommendations on requiring residential property insurers to provide an opportunity for policyholders to decrease the monetary amount of a hurricane deductible predicated upon the policyholder demonstrating certifiable and verifiable mitigation measures that reduce hurricane damage. As a part of the report, the office shall address the feasibility of such a requirement and the specific procedures necessary for implementation and include suggested legislation. The report may also include other related information as the office determines is appropriate for the Legislature to consider.

(2) In conducting such research and offering recommendations for the report, the office shall consult with consumers, insurers, builders, wind certification inspectors, organizations dedicated to promoting disaster safety and property loss mitigation, counties, municipalities, and state agencies as well as any other entity that the office determines could provide relevant information.

Section 24. (1) For fiscal year 2006-2007, the sum of \$100 million is appropriated from the General Revenue Fund to the Department of Financial Services for the Florida Hurricane

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3463 Damage Prevention Endowment as a nonrecurring appropriation for  
3464 the purposes specified in s. 215.558, Florida Statutes.

3465 (2) The sum of \$400 million is appropriated from the  
3466 General Revenue Fund to the Department of Financial Services as  
3467 a nonrecurring appropriation for the purposes specified in s.  
3468 215.5586, Florida Statutes.

3469 (3) Funds provided in subsections (1) and (2) shall be  
3470 transferred by the department to the Florida Hurricane Damage  
3471 Prevention Trust Fund, as created in s. 215.5585, Florida  
3472 Statutes.

3473 (4) For fiscal year 2006-2007, the recurring sum of \$5  
3474 million is appropriated to the Department of Financial Services  
3475 from the Florida Hurricane Damage Prevention Trust Fund, Special  
3476 Category - Financial Incentives for Hurricane Damage Prevention.

3477 (5) For fiscal year 2006-2007, the nonrecurring sum of  
3478 \$400 million is appropriated to the Department of Financial  
3479 Services from the Florida Hurricane Damage Prevention Trust  
3480 Fund, Special Category - Florida Comprehensive Hurricane Damage  
3481 Mitigation Program. The department may spend up to 1 percent of  
3482 the funds appropriated to administer the program.  
3483 Notwithstanding s. 216.301, Florida Statutes, and pursuant to s.  
3484 216.351, Florida Statutes, any unexpended balance from this  
3485 appropriation shall be carried forward at the end of each fiscal  
3486 year until the 2010-2011 fiscal year. At the end of the 2010-  
3487 2011 fiscal year, any obligated funds for qualified projects  
3488 that are not yet disbursed shall remain with the department to  
3489 be used for the purposes of this act. Any unobligated funds of

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3490 this appropriation shall revert to the Florida Hurricane Damage  
3491 Prevention Trust Fund at the end of the 2010-2011 fiscal year.

3492 Section 25. (1) For fiscal year 2006-2007, the sum of  
3493 \$920 million in nonrecurring funds is appropriated from the  
3494 General Revenue Fund to the Department of Financial Services for  
3495 transfer to the Citizens Property Insurance Corporation to avoid  
3496 regular assessments on assessable insurers, as authorized under  
3497 s. 627.351(6)(b)3.b., Florida Statutes, for the 2005 Plan Year  
3498 deficit. The board of governors of the corporation shall use  
3499 appropriated state moneys to fund that portion of the 2005 Plan  
3500 Year deficit which would result in the levying of regular  
3501 assessments in the commercial lines, personal lines, and high-  
3502 risk accounts. The transfer made by the department to the  
3503 corporation shall be limited to the amount of the total regular  
3504 assessments that were authorized by law to cover the 2005 Plan  
3505 Year deficit. Any unused and remaining funds in this  
3506 appropriation shall revert to the General Revenue Fund.

3507 (2) The corporation shall amortize over a 10-year period  
3508 any emergency assessments resulting from the 2005 Plan Year  
3509 deficit.

3510 Section 26. For fiscal year 2006-2007, the sums of  
3511 \$250,000 in recurring funds and \$425,000 in nonrecurring funds  
3512 are appropriated from the Insurance Regulatory Trust Fund in the  
3513 Department of Financial Services to the Office of Insurance  
3514 Regulation for the purpose of carrying out reporting and  
3515 administrative responsibilities of this act.

3516 Section 27. Except as otherwise expressly provided in this  
3517 act, this act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 7225 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Commerce Council  
Representative(s) Ross offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Paragraph (d) of subsection (2), paragraphs (b), (c) and (d) of subsection (4), paragraph (b) of subsection (5), and paragraph (b) of subsection (6) of section 215.555, Florida Statutes, are amended to read:

215.555 Florida Hurricane Catastrophe Fund.--

(2) DEFINITIONS.--As used in this section:

(d) "Losses" means direct incurred losses under covered policies, which shall include losses for additional living expenses not to exceed 40 percent of the insured value of a residential structure or its contents and shall exclude loss adjustment expenses. "Losses" does not include losses for fair rental value, loss of rent or rental income ~~use~~, or business interruption losses.

(4) REIMBURSEMENT CONTRACTS.--

(b)1. The contract shall contain a promise by the board to reimburse the insurer for 45 percent, 75 percent, or 90 percent

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

of its losses from each covered event in excess of the insurer's retention, plus 5 percent of the reimbursed losses to cover loss adjustment expenses.

2. The insurer must elect one of the percentage coverage levels specified in this paragraph and may, upon renewal of a reimbursement contract, elect a lower percentage coverage level if no revenue bonds issued under subsection (6) after a covered event are outstanding, or elect a higher percentage coverage level, regardless of whether or not revenue bonds are outstanding. All members of an insurer group must elect the same percentage coverage level. Any joint underwriting association, risk apportionment plan, or other entity created under s. 627.351 must elect the 90-percent coverage level.

3. The contract shall provide that reimbursement amounts shall not be reduced by reinsurance paid or payable to the insurer from other sources.

4. Notwithstanding any other provisions contained in this section, the board shall make available to those insurers qualifying as limited apportionment companies under s. 627.351(2)(b)3. a contract which cedes to the Fund, after retention, an amount equal to or up to fifty percent of surplus reported by such company as of June 1, 2006. The rate to be charged for this coverage shall be 50 percent rate-on-line which includes one prepaid reinstatement. The minimum retention level that a carrier must retain is 30 percent of surplus as of June 1, 2006. This coverage shall be in addition to all other coverage which may be provided under this section. This provision shall expire May 31, 2007.

(c)1. The contract shall also provide that the obligation of the board with respect to all contracts covering a particular contract year shall not exceed the actual claims-paying capacity

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

54 of the fund up to a limit of \$15 billion for that contract year  
55 adjusted based upon the reported exposure from the prior  
56 contract year to reflect the percentage growth in exposure to  
57 the fund for covered policies since 2003, provided the dollar  
58 growth in the limit may not increase in any year by an amount  
59 greater than the dollar growth of the ~~cash~~ balance of the fund  
60 as of December 31 as defined by rule which occurred over the  
61 prior calendar year.

62 2. In May before the start of the upcoming contract year  
63 and in October during the contract year, the board shall publish  
64 in the Florida Administrative Weekly a statement of the fund's  
65 estimated borrowing capacity and the projected balance of the  
66 fund as of December 31. After the end of each calendar year, the  
67 board shall notify insurers of the estimated borrowing capacity  
68 and the balance of the fund as of December 31 to provide  
69 insurers with data necessary to assist them in determining their  
70 retention and projected payout from the fund for loss  
71 reimbursement purposes. In conjunction with the development of  
72 the premium formula, as provided for in subsection (5), the  
73 board shall publish factors or multiples that assist insurers in  
74 determining their retention and projected payout for the next  
75 contract year. For all regulatory and reinsurance purposes, an  
76 insurer may calculate its projected payout from the fund as its  
77 share of the total fund premium for the current contract year  
78 multiplied by the sum of the projected balance of the fund as of  
79 December 31 and the estimated borrowing capacity for that  
80 contract year as reported under this subparagraph.

81 (d)1. For purposes of determining potential liability and  
82 to aid in the sound administration of the fund, the contract  
83 shall require each insurer to report such insurer's losses from  
84 each covered event on an interim basis, as directed by the



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

85 board. The contract shall require the insurer to report to the  
86 board no later than December 31 of each year, and quarterly  
87 thereafter, its reimbursable losses from covered events for the  
88 year. The contract shall require the board to determine and pay,  
89 as soon as practicable after receiving these reports of  
90 reimbursable losses, the initial amount of reimbursement due and  
91 adjustments to this amount based on later loss information. The  
92 adjustments to reimbursement amounts shall require the board to  
93 pay, or the insurer to return, amounts reflecting the most  
94 recent calculation of losses.

95 2. In determining reimbursements pursuant to this  
96 subsection, the contract shall provide that the board shall:

97 ~~a. First reimburse insurers writing covered policies,~~  
98 ~~which insurers are in full compliance with this section and have~~  
99 ~~petitioned the Office of Insurance Regulation and qualified as~~  
100 ~~limited apportionment companies under s. 627.351(2)(b)3. The~~  
101 ~~amount of such reimbursement shall be the lesser of \$10 million~~  
102 ~~or an amount equal to 10 times the insurer's reimbursement~~  
103 ~~premium for the current year. The amount of reimbursement paid~~  
104 ~~under this sub-subparagraph may not exceed the full amount of~~  
105 ~~reimbursement promised in the reimbursement contract. This sub-~~  
106 ~~subparagraph does not apply with respect to any contract year in~~  
107 ~~which the year-end projected cash balance of the fund, exclusive~~  
108 ~~of any bonding capacity of the fund, exceeds \$2 billion. Only~~  
109 ~~one member of any insurer group may receive reimbursement under~~  
110 ~~this sub-subparagraph.~~

111 ~~a.b. Next~~ Pay to each insurer such insurer's projected  
112 payout, which is the amount of reimbursement it is owed, up to  
113 an amount equal to the insurer's share of the actual premium  
114 paid for that contract year, multiplied by the actual claims-  
115 paying capacity available for that contract year; provided,

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116 entities created pursuant to s. 627.351 shall be further  
117 reimbursed in accordance with sub-subparagraph b. ~~e.~~

118 b.e. Thereafter, establish the prorated reimbursement  
119 level at the highest level for which any remaining fund balance  
120 or bond proceeds are sufficient to reimburse entities created  
121 pursuant to s. 627.351 based on reimbursable losses exceeding  
122 the amounts payable pursuant to sub-subparagraph a. ~~b.~~ for the  
123 current contract year.

124 (5) REIMBURSEMENT PREMIUMS.--

125 (b) The State Board of Administration shall select an  
126 independent consultant to develop a formula for determining the  
127 actuarially indicated premium to be paid to the fund. The  
128 formula shall specify, for each zip code or other limited  
129 geographical area, the amount of premium to be paid by an  
130 insurer for each \$1,000 of insured value under covered policies  
131 in that zip code or other area. In establishing premiums, the  
132 board shall consider the coverage elected under paragraph (4)(b)  
133 and any factors that tend to enhance the actuarial  
134 sophistication of ratemaking for the fund, including  
135 deductibles, type of construction, type of coverage provided,  
136 relative concentration of risks, ~~a factor providing for more~~  
137 ~~rapid cash buildup in the fund until the fund capacity for a~~  
138 ~~single hurricane season is fully funded,~~ and other such factors  
139 deemed by the board to be appropriate. The formula may provide  
140 for a procedure to determine the premiums to be paid by new  
141 insurers that begin writing covered policies after the beginning  
142 of a contract year, taking into consideration when the insurer  
143 starts writing covered policies, the potential exposure of the  
144 insurer, the potential exposure of the fund, the administrative  
145 costs to the insurer and to the fund, and any other factors  
146 deemed appropriate by the board. The formula shall include a

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147 factor of 25 percent of the fund's actuarially indicated premium  
148 in order to provide for more rapid cash buildup in the fund. The  
149 formula must be approved by unanimous vote of the board. The  
150 board may, at any time, revise the formula pursuant to the  
151 procedure provided in this paragraph.

152 (6) REVENUE BONDS.--

153 (a) General provisions.--

154 1. Upon the occurrence of a hurricane and a determination  
155 that the moneys in the fund are or will be insufficient to pay  
156 reimbursement at the levels promised in the reimbursement  
157 contracts, the board may take the necessary steps under  
158 paragraph (c) or paragraph (d) for the issuance of revenue bonds  
159 for the benefit of the fund. The proceeds of such revenue bonds  
160 may be used to make reimbursement payments under reimbursement  
161 contracts; to refinance or replace previously existing  
162 borrowings or financial arrangements; to pay interest on bonds;  
163 to fund reserves for the bonds; to pay expenses incident to the  
164 issuance or sale of any bond issued under this section,  
165 including costs of validating, printing, and delivering the  
166 bonds, costs of printing the official statement, costs of  
167 publishing notices of sale of the bonds, and related  
168 administrative expenses; or for such other purposes related to  
169 the financial obligations of the fund as the board may  
170 determine. The term of the bonds may not exceed 30 years. The  
171 board may pledge or authorize the corporation to pledge all or a  
172 portion of all revenues under subsection (5) and under paragraph  
173 (b) to secure such revenue bonds and the board may execute such  
174 agreements between the board and the issuer of any revenue bonds  
175 and providers of other financing arrangements under paragraph  
176 (7)(b) as the board deems necessary to evidence, secure,  
177 preserve, and protect such pledge. If reimbursement premiums

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received under subsection (5) or earnings on such premiums are used to pay debt service on revenue bonds, such premiums and earnings shall be used only after the use of the moneys derived from assessments under paragraph (b). The funds, credit, property, or taxing power of the state or political subdivisions of the state shall not be pledged for the payment of such bonds. The board may also enter into agreements under paragraph (c) or paragraph (d) for the purpose of issuing revenue bonds in the absence of a hurricane upon a determination that such action would maximize the ability of the fund to meet future obligations.

2. The Legislature finds and declares that the issuance of bonds under this subsection is for the public purpose of paying the proceeds of the bonds to insurers, thereby enabling insurers to pay the claims of policyholders to assure that policyholders are able to pay the cost of construction, reconstruction, repair, restoration, and other costs associated with damage to property of policyholders of covered policies after the occurrence of a hurricane. ~~Revenue bonds may not be issued under this subsection until validated under chapter 75. The validation of at least the first obligations incurred pursuant to this subsection shall be appealed to the Supreme Court, to be handled on an expedited basis.~~

(b) Emergency assessments.--

1. If the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy, by order, an emergency assessment on direct

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premiums for all property and casualty lines of business in this state, including property and casualty business of surplus lines insurers regulated under part VIII of chapter 626, but not including any workers' compensation premiums or medical malpractice premiums. As used in this subsection, the term "property and casualty business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers by s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program. The assessment shall be specified as a percentage of direct written ~~future premium collections~~ and is subject to annual adjustments by the board ~~to reflect changes in premiums subject to assessments collected under this subparagraph~~ in order to meet debt obligations. The same percentage shall apply to all policies in lines of business subject to the assessment issued or renewed during the 12-month period beginning on the effective date of the assessment.

2. A premium is not subject to an annual assessment under this paragraph in excess of 6 percent of premium with respect to obligations arising out of losses attributable to any one contract year, and a premium is not subject to an aggregate annual assessment under this paragraph in excess of 10 percent of premium. An annual assessment under this paragraph shall continue as long as ~~until~~ the revenue bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund the revenue bonds, unless adequate provision has been made for the payment of the bonds under the documents authorizing issuance of the bonds.

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240       3. Emergency assessments shall be collected from  
241 policyholders. Emergency assessments shall be remitted by  
242 insurers as a percentage of direct written premium for the  
243 preceding calendar quarter as specified in the order from the  
244 Office of Insurance Regulation. ~~With respect to each insurer~~  
245 ~~collecting premiums that are subject to the assessment, the~~  
246 ~~insurer shall collect the assessment at the same time as it~~  
247 ~~collects the premium payment for each policy and shall remit the~~  
248 ~~assessment collected to the fund or corporation as provided in~~  
249 ~~the order issued by the Office of Insurance Regulation. The~~  
250 office shall verify the accurate and timely collection and  
251 remittance of emergency assessments and shall report the  
252 information to the board in a form and at a time specified by  
253 the board. Each insurer collecting assessments shall provide the  
254 information with respect to premiums and collections as may be  
255 required by the office to enable the office to monitor and  
256 verify compliance with this paragraph.

257       4. With respect to assessments of surplus lines premiums,  
258 each surplus lines agent shall collect the assessment at the  
259 same time as the agent collects the surplus lines tax required  
260 by s. 626.932, and the surplus lines agent shall remit the  
261 assessment to the Florida Surplus Lines Service Office created  
262 by s. 626.921 at the same time as the agent remits the surplus  
263 lines tax to the Florida Surplus Lines Service Office. The  
264 emergency assessment on each insured procuring coverage and  
265 filing under s. 626.938 shall be remitted by the insured to the  
266 Florida Surplus Lines Service Office at the time the insured  
267 pays the surplus lines tax to the Florida Surplus Lines Service  
268 Office. The Florida Surplus Lines Service Office shall remit the  
269 collected assessments to the fund or corporation as provided in  
270 the order levied by the Office of Insurance Regulation. The

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Florida Surplus Lines Service Office shall verify the proper application of such emergency assessments and shall assist the board in ensuring the accurate and timely collection and remittance of assessments as required by the board. The Florida Surplus Lines Service Office shall annually calculate the aggregate written premium on property and casualty business, other than workers' compensation and medical malpractice, procured through surplus lines agents and insureds procuring coverage and filing under s. 626.938 and shall report the information to the board in a form and at a time specified by the board.

5. Any assessment authority not used for a particular contract year may be used for a subsequent contract year. If, for a subsequent contract year, the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy an emergency assessment up to an amount not exceeding the amount of unused assessment authority from a previous contract year or years, plus an additional 4 percent provided that the assessments in the aggregate do not exceed the limits specified in subparagraph 2.

6. The assessments otherwise payable to the corporation under this paragraph shall be paid to the fund unless and until the Office of Insurance Regulation and the Florida Surplus Lines Service Office have received from the corporation and the fund a notice, which shall be conclusive and upon which they may rely without further inquiry, that the corporation has issued bonds and the fund has no agreements in effect with local governments

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under paragraph (c). On or after the date of the notice and until the date the corporation has no bonds outstanding, the fund shall have no right, title, or interest in or to the assessments, except as provided in the fund's agreement with the corporation.

7. Emergency assessments are not premium and are not subject to the premium tax, to the surplus lines tax, to any fees, or to any commissions. An insurer is liable for all assessments that it collects and must treat the failure of an insured to pay an assessment as a failure to pay the premium. An insurer is not liable for uncollectible assessments.

8. When an insurer is required to return an unearned premium, it shall also return any collected assessment attributable to the unearned premium. A credit adjustment to the collected assessment may be made by the insurer with regard to future remittances that are payable to the fund or corporation, but the insurer is not entitled to a refund.

9. When a surplus lines insured or an insured who has procured coverage and filed under s. 626.938 is entitled to the return of an unearned premium, the Florida Surplus Lines Service Office shall provide a credit or refund to the agent or such insured for the collected assessment attributable to the unearned premium prior to remitting the emergency assessment collected to the fund or corporation.

10. The exemption of medical malpractice insurance premiums from emergency assessments under this paragraph is repealed May 31, 2010 ~~2007~~, and medical malpractice insurance premiums shall be subject to emergency assessments attributable to loss events occurring in the contract years commencing on June 1, 2010 ~~2007~~.



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Section 2. Section 215.558, Florida Statutes, is created to read:

215.558 Florida Hurricane Damage Prevention Endowment.--

(1) PURPOSE AND INTENT.--The purpose of this section is to provide a continuing source of funding for financial incentives to encourage residential property owners of this state to retrofit their properties to make them less vulnerable to hurricane damage, to help decrease the cost of residential property and casualty insurance, and to provide matching funds to local governments and nonprofit entities for projects that will reduce hurricane damage to residential properties. It is the intent of the Legislature that this section be construed liberally to effectuate its purpose.

(2) DEFINITIONS.--As used in this section:

(a) "Board" means the State Board of Administration.

(b) "Corpus" means the money that has been appropriated to the endowment by the 2006 Legislature, together with any amounts subsequently appropriated to the endowment that are specifically designated as contributions to the corpus and any grants, gifts, or donations to the endowment that are specifically designated as contributions to the corpus.

(c) "Earnings" means any money in the endowment in excess of the corpus, including any income generated by investments, any increase in the market value of investments net of decreases in market value, and any appropriations, grants, gifts, or donations to the endowment not specifically designated as contributions to the corpus.

(d) "Endowment" means the Florida Hurricane Damage Prevention Endowment created by this section.

(e) "Program administrator" means the Department of Financial Services.

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363 (3) ADMINISTRATION.--

364 (a) The board shall invest endowment assets as provided in  
365 this section.

366 (b) The board may invest and reinvest funds of the  
367 endowment in accordance with s. 215.47 and consistent with board  
368 policy.

369 (c) The investment objective shall be long-term  
370 preservation of the value of the corpus and a specified regular  
371 annual cash outflow for appropriation, as nonrecurring revenue,  
372 for the purposes specified in subsection (4).

373 (d) In accordance with s. 215.44, the board shall report  
374 on the financial status of the endowment in its annual  
375 investment report to the Legislature.

376 (e) Costs and fees of the board for investment services  
377 shall be deducted from the assets of the endowment.

378 (4) FINANCIAL INCENTIVES FOR RESIDENTIAL HURRICANE DAMAGE  
379 PREVENTION ACTIVITIES.--

380 (a) Not less than 80 percent of the net earnings of the  
381 endowment shall be expended for financial incentives to  
382 residential property owners as described in paragraph (b), and  
383 no more than the remainder of the net earnings of the endowment  
384 shall be expended for matching fund grants to local governments  
385 and nonprofit entities for projects that will reduce hurricane  
386 damage to residential properties as described in paragraph (c).  
387 Any funds authorized for expenditure but not expended for these  
388 purposes shall be returned to the endowment.

389 (b)1. The program administrator, by rule, shall establish  
390 a request for a proposal process to annually solicit proposals  
391 from lending institutions under which the lending institution  
392 will provide interest-free loans to homestead property owners to  
393 pay for inspections of homestead property to determine what

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mitigation measures are needed and for improvements to existing residential properties intended to reduce the homestead property's vulnerability to hurricane damage, in exchange for funding from the endowment.

2. In order to qualify for funding under this paragraph, an interest-free loan program must include an inspection of homestead property to determine what mitigation measures are needed, a means for verifying that the improvements to be paid for from loan proceeds have been demonstrated to reduce a homestead property's vulnerability to hurricane damage, and a means for verifying that the proceeds were actually spent on such improvements. The program must include a method for awarding loans according to the following priorities:

a. The highest priority must be given to single-family owner-occupied homestead dwellings, insured at \$500,000 or less, located in the areas designated as high-risk areas for purposes of coverage by the Citizens Property Insurance Corporation.

b. The next highest priority must be given to single-family owner-occupied homestead dwellings, insured at \$500,000 or less, covered by the Citizens Property Insurance Corporation, wherever located.

c. The next highest priority must be given to single-family owner-occupied homestead dwellings, insured at \$500,000 or less, that are more than 40 years old.

d. The next highest priority must be given to all other single-family owner-occupied homestead dwellings insured at \$500,000 or less.

3. The program administrator shall evaluate proposals based on the following factors:

a. The degree to which the proposal meets the requirements of subparagraph 2.

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b. The lending institution's plan for marketing the loans.

c. The anticipated number of loans to be granted relative to the total amount of funding sought.

4. The program administrator shall annually solicit proposals from local governments and nonprofit entities for projects that will reduce hurricane damage to homestead properties. The program administrator may provide up to 50 percent of the funding for such projects. The projects may include educational programs, repair services, property inspections, and hurricane vulnerability analyses and such other projects as the program administrator determines to be consistent with the purposes of this section.

Section 3. Section 215.5586, Florida Statutes, is created to read:

215.5586 Florida Comprehensive Hurricane Damage Mitigation Program.--There is established within the Department of Financial Services the Florida Comprehensive Hurricane Damage Mitigation Program. The program shall be administered by an individual with prior executive experience in the private sector in the areas of insurance, business, or construction. The program shall develop and implement a comprehensive and coordinated approach for hurricane damage mitigation that shall include the following:

(1) WIND CERTIFICATION AND HURRICANE MITIGATION INSPECTIONS.--

(a) Free home-retrofit inspections of site-built, residential property, including up to four-family residential units, shall be offered to determine what mitigation measures are needed and what improvements to existing residential properties are needed to reduce the property's vulnerability to hurricane damage. The Department of Financial Services shall

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establish a request for proposals to solicit proposals from wind certification entities to provide at no cost to homeowners wind certification and hurricane mitigation inspections. The inspections provided to homeowners, at a minimum, must include:

1. A home inspection and report that summarizes the results and identifies corrective actions a homeowner may take to mitigate hurricane damage.

2. A range of cost estimates regarding the mitigation features.

3. Insurer-specific information regarding premium discounts correlated to recommended mitigation features identified by the inspection.

4. A hurricane resistance rating scale specifying the home's current as well as projected wind resistance capabilities.

(b) To qualify for selection by the department as a provider of wind certification and hurricane mitigation inspections the entity must, at a minimum, comply with the following:

1. Utilize wind certification and hurricane mitigation inspectors who meet the following criteria:

a. Have prior experience in residential construction or inspection and how have received specialized training in hurricane mitigation procedures;

b. Have undergone drug testing and background checks; and

c. Have been certified, in a manner satisfactory to the department, to conduct the inspections.

2. Provide a quality assurance program including a reinspection component.

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485        (2) GRANTS.--Financial grants shall be used to encourage  
486 site-built, residential property owners to retrofit their  
487 properties to make them less vulnerable to hurricane damage.

488        (a) To be eligible for a grant a residential property  
489 must:

490            1. Have been granted a homestead exemption under chapter  
491 196.

492            2. Be a dwelling with an insured value of \$500,000 or  
493 less.

494            3. Have undergone an acceptable wind certification and  
495 hurricane mitigation inspection.

496            4. If par of multi-family residential units, receive a  
497 grant only if all homeowners participate and the total number of  
498 units does not exceed four.

499        (b) All grants must be matched on a dollar-for-dollar  
500 basis for a total of \$10,000 for the mitigation project with the  
501 state's contribution capped at \$5,000.

502        (c) The program shall create a process in which mitigation  
503 contractors agree to participate and seek reimbursement from the  
504 state and homeowners select from a list of participating  
505 contractors. All mitigation must be based upon the securing of  
506 all required local permits and inspections. Mitigation projects  
507 are subject to random reinspection of up to at least 10 percent  
508 of all projects.

509        (d) Matching fund grants shall also be made available to  
510 local governments and nonprofit entities for projects that will  
511 reduce hurricane damage to eligible residential property.

512        (3) LOANS.--Financial incentives shall be provided as  
513 authorized by s. 215.558.

514        (4) EDUCATION AND CONSUMER AWARENESS.--Multimedia public  
515 education, awareness, and advertising efforts designed to

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specifically address mitigation techniques shall be employed, as well as a component to support ongoing consumer resources and referral services.

(5) ADVISORY COUNCIL.--There is created an advisory council to provide advice and assistance to the program administrator with regard to its administration of the program. The advisory council shall consist of:

(a) A representative of lending institutions, selected by the Financial Services Commission from a list of at least three persons recommended by the Florida Bankers Association.

(b) A representative of residential property insurers, selected by the Financial Services Commission from a list of at least three persons recommended by the Florida Insurance Council.

(c) A representative of home builders, selected by the Financial Services Commission from a list of at least three persons recommended by the Florida Home Builders Association.

(d) A faculty member of a state university selected by the Financial Services Commission who is an expert in hurricane-resistant construction methodologies and materials.

(e) Two members of the House of Representatives selected by the Speaker of the House of Representatives.

(f) Two members of the Senate selected by the President of the Senate.

(g) The Chief Executive Officer of the Federal Alliance for Safe Homes, Inc., or his or her designee.

(h) The senior officer of the Florida Hurricane Catastrophe Fund.

(i) The executive director of Citizens Property Insurance Corporation.

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(j) The director of the Division of Emergency Management of the Department of Community Affairs.

Members appointed under paragraphs (a)-(d) shall serve at the pleasure of the Financial Services Commission. Members appointed under paragraphs (e) and (f) shall serve at the pleasure of the appointing officer. All other members shall serve voting ex officio. Members of the advisory council shall serve without compensation but may receive reimbursement as provided in s. 112.061 for per diem and travel expenses incurred in the performance of their official duties.

(6) RULES.--The Department of Financial Services shall adopt rules pursuant to ss. 120.536(1) and 120.54 governing the Florida Comprehensive Hurricane Damage Mitigation Program.

Section 4. Section 215.559, Florida Statutes, is amended to read:

215.559 Hurricane Loss Mitigation Program.--

(1) There is created a Hurricane Loss Mitigation Program. The Legislature shall annually appropriate \$10 million of the moneys authorized for appropriation under s. 215.555(7)(c) from the Florida Hurricane Catastrophe Fund to the Department of Community Affairs for the purposes set forth in this section.

(2)(a) Seven million dollars in funds provided in subsection (1) shall be used for programs to improve the wind resistance of residences and mobile homes, including loans, subsidies, grants, demonstration projects, and direct assistance; cooperative programs with local governments and the Federal Government; and other efforts to prevent or reduce losses or reduce the cost of rebuilding after a disaster.

(b) Three million dollars in funds provided in subsection (1) shall be used to retrofit existing facilities used as public



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hurricane shelters. The department must prioritize the use of these funds for projects included in the September 1, 2000, version of the Shelter Retrofit Report prepared in accordance with s. 252.385(3), and each annual report thereafter. The department must give funding priority to projects in regional planning council regions that have shelter deficits and to projects that maximize use of state funds.

~~(3) By the 2006-2007 fiscal year, the Department of Community Affairs shall develop a low-interest loan program for homeowners and mobile home owners to retrofit their homes with fixtures or apply construction techniques that have been demonstrated to reduce the amount of damage or loss due to a hurricane. Funding for the program shall be used to subsidize or guaranty private sector loans for this purpose to qualified homeowners by financial institutions chartered by the state or Federal Government. The department may enter into contracts with financial institutions for this purpose. The department shall establish criteria for determining eligibility for the loans and selecting recipients, standards for retrofitting homes or mobile homes, limitations on loan subsidies and loan guaranties, and other terms and conditions of the program, which must be specified in the department's report to the Legislature on January 1, 2006, required by subsection (8). For the 2005-2006 fiscal year, the Department of Community Affairs may use up to \$1 million of the funds appropriated pursuant to paragraph (2)(a) to begin the low-interest loan program as a pilot project in one or more counties. The Department of Financial Services, the Office of Financial Regulation, the Florida Housing Finance Corporation, and the Office of Tourism, Trade, and Economic Development shall assist the Department of Community Affairs in establishing the program and pilot project. The department may~~

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608 ~~use up to 2.5 percent of the funds appropriated in any given~~  
609 ~~fiscal year for administering the loan program. The department~~  
610 ~~may adopt rules to implement the program.~~

611 (3)~~(4)~~ Forty percent of the total appropriation in  
612 paragraph (2)(a) shall be used to inspect and improve tie-downs  
613 for mobile homes. Within 30 days after the effective date of  
614 that appropriation, the department shall contract with a public  
615 higher educational institution in this state which has previous  
616 experience in administering the programs set forth in this  
617 subsection to serve as the administrative entity and fiscal  
618 agent pursuant to s. 216.346 for the purpose of administering  
619 the programs set forth in this subsection in accordance with  
620 established policy and procedures. The administrative entity  
621 working with the advisory council set up under subsection (6)  
622 shall develop a list of mobile home parks and counties that may  
623 be eligible to participate in the tie-down program.

624 (4)~~(5)~~ Of moneys provided to the Department of Community  
625 Affairs in paragraph (2)(a), 10 percent shall be allocated to a  
626 Type I Center within the State University System dedicated to  
627 hurricane research. The Type I Center shall develop a  
628 preliminary work plan approved by the advisory council set forth  
629 in subsection (6) to eliminate the state and local barriers to  
630 upgrading existing mobile homes and communities, research and  
631 develop a program for the recycling of existing older mobile  
632 homes, and support programs of research and development relating  
633 to hurricane loss reduction devices and techniques for site-  
634 built residences. The State University System also shall consult  
635 with the Department of Community Affairs and assist the  
636 department with the report required under subsection (8).

637 (5)~~(6)~~ The Department of Community Affairs shall develop  
638 the programs set forth in this section in consultation with an

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advisory council consisting of a representative designated by the Chief Financial Officer, a representative designated by the Florida Home Builders Association, a representative designated by the Florida Insurance Council, a representative designated by the Federation of Manufactured Home Owners, a representative designated by the Florida Association of Counties, and a representative designated by the Florida Manufactured Housing Association.

~~(6)(7)~~ Moneys provided to the Department of Community Affairs under this section are intended to supplement other funding sources of the Department of Community Affairs and may not supplant other funding sources of the Department of Community Affairs.

~~(7)(8)~~ On January 1st of each year, the Department of Community Affairs shall provide a full report and accounting of activities under this section and an evaluation of such activities to the Speaker of the House of Representatives, the President of the Senate, and the Majority and Minority Leaders of the House of Representatives and the Senate.

~~(8)(9)~~ This section is repealed June 30, 2011.

Section 5. Subsections (1) and (2) of section 626.918, Florida Statutes, are amended to read:

626.918 Eligible surplus lines insurers.--

(1) A ~~No~~ surplus lines agent may not ~~shall~~ place any coverage with any unauthorized insurer which is not then an eligible surplus lines insurer, except as permitted under subsections (5) and (6).

(2) An ~~No~~ unauthorized insurer may not ~~shall~~ be or become an eligible surplus lines insurer unless made eligible by the office in accordance with the following conditions:

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669 (a) Eligibility of the insurer must be requested in  
670 writing by the Florida Surplus Lines Service Office.+

671 (b) The insurer must be currently an authorized insurer in  
672 the state or country of its domicile as to the kind or kinds of  
673 insurance proposed to be so placed and must have been such an  
674 insurer for not less than the 3 years next preceding or must be  
675 the wholly owned subsidiary of such authorized insurer or must  
676 be the wholly owned subsidiary of an already eligible surplus  
677 lines insurer as to the kind or kinds of insurance proposed for  
678 a period of not less than the 3 years next preceding. However,  
679 the office may waive the 3-year requirement if the insurer  
680 provides a product or service not readily available to the  
681 consumers of this state or has operated successfully for a  
682 period of at least 1 year next preceding and has capital and  
683 surplus of not less than \$25 million.+

684 (c) Before granting eligibility, the requesting surplus  
685 lines agent or the insurer shall furnish the office with a duly  
686 authenticated copy of its current annual financial statement in  
687 the English language and with all monetary values therein  
688 expressed in United States dollars, at an exchange rate (in the  
689 case of statements originally made in the currencies of other  
690 countries) then-current and shown in the statement, and with  
691 such additional information relative to the insurer as the  
692 office may request.+

693 (d)1.a. The insurer must have and maintain surplus as to  
694 policyholders of not less than \$15 million; in addition, an  
695 alien insurer must also have and maintain in the United States a  
696 trust fund for the protection of all its policyholders in the  
697 United States under terms deemed by the office to be reasonably  
698 adequate, in an amount not less than \$5.4 million. Any such  
699 surplus as to policyholders or trust fund shall be represented

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by investments consisting of eligible investments for like funds of like domestic insurers under part II of chapter 625 provided, however, that in the case of an alien insurance company, any such surplus as to policyholders may be represented by investments permitted by the domestic regulator of such alien insurance company if such investments are substantially similar in terms of quality, liquidity, and security to eligible investments for like funds of like domestic insurers under part II of chapter 625. Clean, irrevocable, unconditional, and evergreen letters of credit issued or confirmed by a qualified United States financial institution, as defined in subparagraph 2., may be used to fund the trust.

b.2. For those surplus lines insurers that were eligible on January 1, 1994, and that maintained their eligibility thereafter, the required surplus as to policyholders shall be:

(I)a. On December 31, 1994, and until December 30, 1995, \$2.5 million.

(II)b. On December 31, 1995, and until December 30, 1996, \$3.5 million.

(III)c. On December 31, 1996, and until December 30, 1997, \$4.5 million.

(IV)d. On December 31, 1997, and until December 30, 1998, \$5.5 million.

(V)e. On December 31, 1998, and until December 30, 1999, \$6.5 million.

(VI)f. On December 31, 1999, and until December 30, 2000, \$8 million.

(VII)g. On December 31, 2000, and until December 30, 2001, \$9.5 million.

(VIII)h. On December 31, 2001, and until December 30, 2002, \$11 million.

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731        ~~(IX) i.~~ On December 31, 2002, and until December 30, 2003,  
732 \$13 million.

733        ~~(X) j.~~ On December 31, 2003, and thereafter, \$15 million.

734        ~~c.3.~~ The capital and surplus requirements as set forth in  
735 sub-subparagraph b. subparagraph 2. do not apply in the case of  
736 an insurance exchange created by the laws of individual states,  
737 where the exchange maintains capital and surplus pursuant to the  
738 requirements of that state, or maintains capital and surplus in  
739 an amount not less than \$50 million in the aggregate. For an  
740 insurance exchange which maintains funds in the amount of at  
741 least \$12 million for the protection of all insurance exchange  
742 policyholders, each individual syndicate shall maintain minimum  
743 capital and surplus in an amount not less than \$3 million. If  
744 the insurance exchange does not maintain funds in the amount of  
745 at least \$12 million for the protection of all insurance  
746 exchange policyholders, each individual syndicate shall meet the  
747 minimum capital and surplus requirements set forth in sub-  
748 subparagraph b. subparagraph 2.

749        ~~d.4.~~ A surplus lines insurer which is a member of an  
750 insurance holding company that includes a member which is a  
751 Florida domestic insurer as set forth in its holding company  
752 registration statement, as set forth in s. 628.801 and rules  
753 adopted thereunder, may elect to maintain surplus as to  
754 policyholders in an amount equal to the requirements of s.  
755 624.408, subject to the requirement that the surplus lines  
756 insurer shall at all times be in compliance with the  
757 requirements of chapter 625.

758  
759 The election shall be submitted to the office and shall be  
760 effective upon the office's being satisfied that the  
761 requirements of sub-subparagraph d. subparagraph 4. have been

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met. The initial date of election shall be the date of office approval. The election approval application shall be on a form adopted by commission rule. The office may approve an election form submitted pursuant to sub-subparagraph d. ~~subparagraph 4.~~ only if it was on file with the former Department of Insurance before February 28, 1998.~~†~~

2. For purposes of letters of credit under subparagraph 1., the term "qualified United States financial institution" means an institution that:

a. Is organized or, in the case of a United States office of a foreign banking organization, is licensed under the laws of the United States or any state.

b. Is regulated, supervised, and examined by authorities of the United States or any state having regulatory authority over banks and trust companies.

c. Has been determined by the office or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit are acceptable to the office.

(e) The insurer must be of good reputation as to the providing of service to its policyholders and the payment of losses and claims.~~†~~

(f) The insurer must be eligible, as for authority to transact insurance in this state, under s. 624.404(3).~~†~~ ~~and~~

(g) This subsection does not apply as to unauthorized insurers made eligible under s. 626.917 as to wet marine and aviation risks.

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791 Section 6. Paragraph (j) is added to subsection (2) of  
792 section 627.062, Florida Statutes, and subsection (5) is amended  
793 and subsections (9) and (10) are added to that section, to read:

794 627.062 Rate standards.--

795 (2) As to all such classes of insurance:

796 (j) Effective January 1, 2007, notwithstanding any other  
797 provision of this section:

798 1. With respect to any residential property insurance  
799 subject to regulation under this section, a rate filing,  
800 including, but not limited to, any rate changes, rating factors,  
801 territories, classification, discounts, and credits, with  
802 respect to any policy form, including endorsements issued with  
803 the form, that results in an overall average statewide premium  
804 increase or decrease of no more than 5 percent above or below  
805 the premium that would result from the insurer's rates then in  
806 effect shall not be subject to a determination by the office  
807 that the rate is excessive or unfairly discriminatory except as  
808 provided in subparagraph 3., or any other provision of law,  
809 provided all changes specified in the filing do not result in an  
810 overall premium increase of more than 10 percent for any one  
811 territory, for reasons related solely to the rate change. As  
812 used in this subparagraph, the term "insurer's rates then in  
813 effect" includes only rates that have been lawfully in effect  
814 under this section or rates that have been determined to be  
815 lawful through administrative proceedings or judicial  
816 proceedings.

817 2. An insurer may not make filings under this paragraph  
818 with respect to any policy form, including endorsements issued  
819 with the form, if the overall premium changes resulting from  
820 such filings exceed the amounts specified in this paragraph in  
821 any 12-month period. An insurer may proceed under other



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provisions of this section or other provisions of law if the insurer seeks to exceed the premium or rate limitations of this paragraph.

3. This paragraph does not affect the authority of the office to disapprove a rate as inadequate or to disapprove a filing for the unlawful use of unfairly discriminatory rating factors that are prohibited by the laws of this state. An insurer electing to implement a rate change under this paragraph shall submit a filing to the office at least 30 days prior to the effective date of the rate change. The office shall have 30 days after the filing's submission to review the filing and determine if the rate is inadequate or uses unfairly discriminatory rating factors. Absent a finding by the office within such 30-day period that the rate is inadequate or that the insurer has used unfairly discriminatory rating factors, the filing is deemed approved. If the office finds during the 30-day period that the filing will result in inadequate premiums or otherwise endanger the insurer's solvency, the office shall suspend the rate decrease. If the insurer is implementing an overall rate increase, the results of which continue to produce an inadequate rate, such increase shall proceed pending additional action by the office to ensure the adequacy of the rate.

4. This paragraph does not apply to rate filings for any insurance other than residential property insurance.

The provisions of this subsection shall not apply to workers' compensation and employer's liability insurance and to motor vehicle insurance.

(5) With respect to a rate filing involving coverage of the type for which the insurer is required to pay a

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853 reimbursement premium to the Florida Hurricane Catastrophe Fund,  
854 the insurer may fully recoup in its property insurance premiums  
855 any reimbursement premiums paid to the Florida Hurricane  
856 Catastrophe Fund, together with ~~reasonable~~ costs of other  
857 reinsurance consistent with prudent business practices and sound  
858 actuarial principles, but may not recoup reinsurance costs that  
859 duplicate coverage provided by the Florida Hurricane Catastrophe  
860 Fund. The burden is on the office to establish that any costs  
861 of other reinsurance are in excess of amounts consistent with  
862 prudent business practices and sound actuarial principles. An  
863 insurer may not recoup more than 1 year of reimbursement premium  
864 at a time. Any under-recoupment from the prior year may be added  
865 to the following year's reimbursement premium and any over-  
866 recoupment shall be subtracted from the following year's  
867 reimbursement premium.

868 (9) Notwithstanding any other provision of this section,  
869 any rate filing or applicable portion of the rate filing that  
870 includes the peril of wind within the boundary of the area  
871 covered by the high-risk account of the Citizens Property  
872 Insurance Corporation shall be deemed approved upon submission  
873 to the office if the filing or the applicable portion of the  
874 filing requests approval of a rate that is less than the  
875 approved rate for similar risks insured in the high-risk account  
876 of the corporation unless the office determines that such rate  
877 is inadequate or unfairly discriminatory as provided in  
878 subsection (2).

879 (10)(a) Beginning January 1, 2007, the office shall  
880 annually provide a report to the President of the Senate, the  
881 Speaker of the House of Representatives, the minority party  
882 leader of each house of the Legislature, and the chairs of the  
883 standing committees of each house of the Legislature having

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jurisdiction over insurance issues, specifying the impact of flexible rate regulation under paragraph (2)(j) on the degree of competition in insurance markets in this state.

(b) The report shall include a year-by-year comparison of the number of companies participating in the market for each class of insurance and the relative rate levels. The report shall also specify:

1. The number of rate filings made under paragraph (2)(j), the rate levels under those filings, and the market share affected by those filings.

2. The number of filings made on a file and use basis, the rate levels under those filings, and the market share affected by those filings.

3. The number of filings made on a use and file basis, the rate levels under those filings, and the market share affected by those filings.

4. Recommendations to promote competition in the insurance market and further protect insurance consumers.

Section 7. Paragraph (c) of subsection (3) of section 627.0628, Florida Statutes, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.--

(3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.--

(c) With respect to a rate filing under s. 627.062, an insurer may employ actuarial methods, principles, standards, models, or output ranges found by the commission to be accurate or reliable to determine hurricane loss factors for use in a rate filing under s. 627.062. Such findings and factors are admissible and relevant in consideration of a rate filing by the office or in any arbitration or administrative or judicial

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915 review only if the office and the consumer advocate appointed  
916 pursuant to s. 627.0613 have a reasonable opportunity to review  
917 ~~access to~~ all of the basic assumptions and factors that were  
918 used in developing the actuarial methods, principles, standards,  
919 models, or output ranges. After review of the specific models by  
920 the commission, the office and the consumer advocate may not  
921 pose any questions generated from their respective reviews that  
922 duplicate or compromise the conclusions of the commission  
923 relative to the accuracy or reliability of the models in  
924 producing hurricane loss factors for use in a rate filing under  
925 s. 627.062, and are not precluded from disclosing such  
926 information in a rate proceeding.

927 Section 8. Section 627.06281, Florida Statutes, is amended  
928 to read:

929 627.06281 Public hurricane loss projection model;  
930 reporting of data by insurers.--

931 (1) Within 30 days after a written request for loss data  
932 and associated exposure data by the office or a type I center  
933 within the State University System established to study  
934 mitigation, residential property insurers and licensed rating  
935 and advisory organizations that compile residential property  
936 insurance loss data shall provide loss data and associated  
937 exposure data for residential property insurance policies to the  
938 office or to a type I center within the State University System  
939 established to study mitigation, as directed by the office, for  
940 the purposes of developing, maintaining, and updating a public  
941 model for hurricane loss projections. The loss data and  
942 associated exposure data provided shall be in writing.

943 (2) The office may not use the public model for hurricane  
944 loss projection referred to in subsection (1) for any purpose  
945 under s. 627.062 or s. 627.351 until the model has been

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submitted to the Florida Commission on Hurricane Loss Projection Methodology for review under s. 627.0628 and the commission has found the model to be accurate and reliable pursuant to the same process and standards as the commission uses for the review of other hurricane loss projection models.

Section 9. Subsection (2) of section 627.0645, Florida Statutes, is amended to read:

627.0645 Annual filings.--

(2)(a) Deviations filed by an insurer to any rating organization's base rate filing are not subject to this section.

(b) The office, after receiving a request to be exempted from the provisions of this section, may, for good cause due to insignificant numbers of policies in force or insignificant premium volume, exempt a company, by line of coverage, from filing rates or rate certification as required by this section.

(c) The office, after receiving a request to be exempted from the provisions of this section, shall exempt a company with less than 500 residential homeowner or mobile homeowner policies from filing rates or rate certification as required by this section.

Section 10. Subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.--

(6) CITIZENS PROPERTY INSURANCE CORPORATION.--

(a)1.a. The Legislature finds that actual and threatened catastrophic losses to property in this state from hurricanes have caused insurers to be unwilling or unable to provide property insurance coverage to the extent sought and needed. It is in the public interest and a public purpose to assist in ensuring ~~assuring~~ that homestead property in the state is insured so as to facilitate the remediation, reconstruction, and

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977 replacement of damaged or destroyed property in order to reduce  
978 or avoid the negative effects otherwise resulting to the public  
979 health, safety, and welfare; to the economy of the state; and to  
980 the revenues of the state and local governments needed to  
981 provide for the public welfare. It is necessary, therefore, to  
982 provide property insurance to applicants who are in good faith  
983 entitled to procure insurance through the voluntary market but  
984 are unable to do so. The Legislature intends by this subsection  
985 that property insurance be provided and that it continues, as  
986 long as necessary, through an entity organized to achieve  
987 efficiencies and economies, while providing service to  
988 policyholders, applicants, and agents that is no less than the  
989 quality generally provided in the voluntary market, all toward  
990 the achievement of the foregoing public purposes. Because it is  
991 essential for the corporation to have the maximum financial  
992 resources to pay claims following a catastrophic hurricane, it  
993 is the intent of the Legislature that the income of the  
994 corporation be exempt from federal income taxation and that  
995 interest on the debt obligations issued by the corporation be  
996 exempt from federal income taxation.

997 b. The Legislature finds and declares that:

998 (I) The commitment of the state, as expressed in sub-  
999 subparagraph a., to providing a means of ensuring the  
1000 availability of property insurance through a residual market  
1001 mechanism is hereby reaffirmed.

1002 (II) Despite legislative efforts to ensure that the  
1003 residual market for property insurance is self-supporting to the  
1004 greatest reasonable extent, residual market policyholders are to  
1005 some degree subsidized by the general public through assessments  
1006 on owners of property insured in the voluntary market and their

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1007 insurers and through the potential use of general revenues of  
1008 the state to eliminate or reduce residual market deficits.

1009 (III) The degree of such subsidy is a matter of public  
1010 policy. It is the intent of the Legislature to better control  
1011 the subsidy through at least the following means:

1012 (A) Restructuring the residual market mechanism to provide  
1013 separate treatment of homestead and nonhomestead properties,  
1014 with the intent of continuing to provide an insurance program  
1015 with limited subsidies for homestead properties while providing  
1016 a nonsubsidized insurance program for nonhomestead properties.

1017 (B) Redefining the concept of rate adequacy in the  
1018 subsidized residual market with the intent of ensuring a rate  
1019 structure that will enable the subsidized residual market to be  
1020 self-supporting except in the event of hurricane losses of a  
1021 legislatively specified magnitude. It is the intent of the  
1022 Legislature that the funding of the subsidized residual market  
1023 be structured to be self-supporting up to the point of its 100-  
1024 year probable maximum loss and that the funding be structured to  
1025 make reliance on assessments or other sources of public funding  
1026 necessary only in the event of a 100-year probable maximum loss  
1027 or larger loss.

1028 2. The Residential Property and Casualty Joint  
1029 Underwriting Association originally created by this statute  
1030 shall be known, as of July 1, 2002, as the Citizens Property  
1031 Insurance Corporation. The corporation shall provide insurance  
1032 for homesteaded residential property and may provide insurance  
1033 for residential and commercial property, for applicants who are  
1034 in good faith entitled, but are unable, to procure insurance  
1035 through the voluntary market. The corporation shall operate  
1036 pursuant to a plan of operation approved by order of the office.  
1037 The plan is subject to continuous review by the office. The

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office may, by order, withdraw approval of all or part of a plan if the office determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner's, mobile home owner's, dwelling, tenant's, condominium unit owner's, and similar policies, and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.

3. It is the intent of the Legislature that policyholders, applicants, and agents of the corporation receive service and treatment of the highest possible level but never less than that generally provided in the voluntary market. It also is intended that the corporation be held to service standards no less than those applied to insurers in the voluntary market by the office with respect to responsiveness, timeliness, customer courtesy, and overall dealings with policyholders, applicants, or agents of the corporation.

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers, but insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An authorized insurer's assessment liability shall begin on the first day of the



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calendar year following the year in which the insurer was issued a certificate of authority to transact insurance for subject lines of business in this state and shall terminate 1 year after the end of the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2.a. All revenues, assets, liabilities, losses, and expenses of the corporation shall be divided into four ~~three~~ separate accounts as follows:

(I) Three separate homestead accounts that may provide coverage only for homestead properties. The term "homestead property" means a residential property that has been granted a homestead exemption under chapter 196. The term also includes a property that is qualified for such exemption but has not applied for the exemption as of the date of issuance of the policy, provided the policyholder obtains the exemption within 1 year after initial issuance of the policy. The term also includes an owner-occupied mobile or manufactured home as defined in s. 320.01 permanently affixed to real property regardless of whether the owner of the mobile or manufactured home is also the owner of the land on which the mobile or manufactured home is permanently affixed. However, the term does not include a mobile home that is being held for display by a licensed mobile home dealer or a licensed mobile home manufacturer and is not owner-occupied. For the purposes of this sub-sub-subparagraph, the term "homestead property" also includes property covered by tenant's insurance; commercial lines residential policies; any county, district, or municipal hospital, or hospital licensed by any not-for-profit corporation which is qualified under s. 501(c)(3) of the United States Internal Revenue Code; and continuing care retirement

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1100 communities certified under chapter 651. The accounts providing  
1101 coverage only for homestead properties are:

1102 (A)~~(I)~~ A personal lines account for personal residential  
1103 policies issued by the corporation or issued by the Residential  
1104 Property and Casualty Joint Underwriting Association and renewed  
1105 by the corporation that provide comprehensive, multiperil  
1106 coverage on risks that are not located in areas eligible for  
1107 coverage in the Florida Windstorm Underwriting Association as  
1108 those areas were defined on January 1, 2002, and for such  
1109 policies that do not provide coverage for the peril of wind on  
1110 risks that are located in such areas;

1111 (B)~~(II)~~ A commercial lines account for commercial  
1112 residential policies issued by the corporation or issued by the  
1113 Residential Property and Casualty Joint Underwriting Association  
1114 and renewed by the corporation that provide coverage for basic  
1115 property perils on risks that are not located in areas eligible  
1116 for coverage in the Florida Windstorm Underwriting Association  
1117 as those areas were defined on January 1, 2002, and for such  
1118 policies that do not provide coverage for the peril of wind on  
1119 risks that are located in such areas; and

1120 (C)~~(III)~~ A high-risk account for personal residential  
1121 policies and commercial residential ~~and commercial~~  
1122 ~~nonresidential~~ property policies issued by the corporation or  
1123 transferred to the corporation that provide coverage for the  
1124 peril of wind on risks that are located in areas eligible for  
1125 coverage in the Florida Windstorm Underwriting Association as  
1126 those areas were defined on January 1, 2002. The high-risk  
1127 account must also include quota share primary insurance under  
1128 subparagraph (c)2. The area eligible for coverage under the  
1129 high-risk account also includes the area within Port Canaveral,  
1130 which is bordered on the south by the City of Cape Canaveral,

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bordered on the west by the Banana River, and bordered on the north by Federal Government property. The office may remove territory from the area eligible for wind-only and quota share coverage if, after a public hearing, the office finds that authorized insurers in the voluntary market are willing and able to write sufficient amounts of personal and commercial residential coverage for all perils in the territory, including coverage for the peril of wind, such that risks covered by wind-only policies in the removed territory could be issued a policy by the corporation in either the personal lines or commercial lines account without a significant increase in the corporation's probable maximum loss in such account. Removal of territory from the area eligible for wind-only or quota share coverage does not alter the assignment of wind coverage written in such areas to the high-risk account.

(II) (A) A separate nonhomestead account for commercial nonresidential property policies and for all properties that otherwise meet all of the criteria for eligibility for coverage within one of the three homestead accounts described in sub-sub-subparagraph (I) but that do not meet the definition of homestead property specified in sub-sub-subparagraph (I). The nonhomestead account shall provide the same types of coverage as are provided by the three homestead accounts, including wind-only coverage in the high-risk account area. In order to be eligible for coverage in the nonhomestead account, at the initial issuance of the policy and at renewal the property owner shall provide the corporation with a sworn affidavit stating that the property has been rejected for coverage by at least three authorized insurers and at least three surplus lines insurers.

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1161        (B) An authorized insurer or approved insurer as defined  
1162 in s. 626.914(2) may provide coverage to a nonhomestead property  
1163 owner on an individual risk rate basis. Rates and forms of an  
1164 authorized insurer for nonhomestead properties are not subject  
1165 to ss. 627.062 and 627.0629, except s. 627.0629(2)(b). Such  
1166 rates and forms are subject to all other applicable provisions  
1167 of this code and rules adopted under this code. During the  
1168 course of an insurer's market conduct examination, the office  
1169 may review the rate for any nonhomestead property to determine  
1170 if such rate is inadequate or unfairly discriminatory. Rates on  
1171 nonhomestead property may be found inadequate by the office if  
1172 they are clearly insufficient, together with the investment  
1173 income attributable to the insurer, to sustain projected losses  
1174 and expenses in the class of business to which such rates apply.  
1175 Rates on nonhomestead property may also be found inadequate as  
1176 to the premium charged to a risk or group of risks if discounts  
1177 or credits are allowed that exceed a reasonable reflection of  
1178 expense savings and reasonably expected loss experience from the  
1179 risk or group of risks. Rates on nonhomestead property may be  
1180 found to be unfairly discriminatory as to a risk or group of  
1181 risks by the office if the application of premium discounts,  
1182 credits, or surcharges among such risks does not bear a  
1183 reasonable relationship to the expected loss and expense  
1184 experience among the various risks. A rating plan, including  
1185 discounts, credits, or surcharges on nonhomestead property, may  
1186 also be found to be unfairly discriminatory if the plan fails to  
1187 clearly and equitably reflect consideration of the  
1188 policyholder's participation in a risk management program  
1189 adjusted pursuant to s. 627.0625. The office may order an  
1190 insurer to discontinue using a rate for new policies or upon  
1191 renewal of a policy if the office finds the rate to be

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1192 inadequate or unfairly discriminatory. Insurers shall maintain  
1193 records and documentation relating to rates and forms subject to  
1194 this sub-sub-sub-subparagraph for a period of at least 5 years  
1195 after the effective date of the policy.

1196 b. The three separate homestead accounts must be  
1197 maintained as long as financing obligations entered into by the  
1198 Florida Windstorm Underwriting Association or Residential  
1199 Property and Casualty Joint Underwriting Association are  
1200 outstanding, in accordance with the terms of the corresponding  
1201 financing documents. When the financing obligations are no  
1202 longer outstanding, in accordance with the terms of the  
1203 corresponding financing documents, the corporation may use a  
1204 single homestead account for all revenues, assets, liabilities,  
1205 losses, and expenses of the corporation. All revenues, assets,  
1206 liabilities, losses, and expenses attributable to the  
1207 nonhomestead account shall be maintained separately.

1208 c. Creditors of the Residential Property and Casualty  
1209 Joint Underwriting Association shall have a claim against, and  
1210 recourse to, the accounts referred to in sub-sub-sub-  
1211 subparagraphs ~~sub-sub-subparagraphs~~ a.(I) (A) and (B) ~~(II)~~ and  
1212 shall have no claim against, or recourse to, the account  
1213 referred to in sub-sub-sub-subparagraph ~~sub-sub-subparagraph~~  
1214 a. (I) (C) ~~(III)~~. Creditors of the Florida Windstorm Underwriting  
1215 Association shall have a claim against, and recourse to, the  
1216 account referred to in sub-sub-sub-subparagraph ~~sub-sub-~~  
1217 ~~subparagraph~~ a. (I) (C) ~~(III)~~ and shall have no claim against, or  
1218 recourse to, the accounts referred to in sub-sub-sub-  
1219 subparagraphs ~~sub-sub-subparagraphs~~ a.(I) (A) and (B) ~~(II)~~.

1220 d. Revenues, assets, liabilities, losses, and expenses not  
1221 attributable to particular accounts shall be prorated among the  
1222 accounts.

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1223 e. The Legislature finds that the revenues of the  
1224 corporation are revenues that are necessary to meet the  
1225 requirements set forth in documents authorizing the issuance of  
1226 bonds under this subsection.

1227 f. No part of the income of the corporation may inure to  
1228 the benefit of any private person.

1229 3. With respect to a deficit in any of the homestead  
1230 accounts ~~an account~~:

1231 a. When the deficit incurred in a particular calendar year  
1232 is not greater than 10 percent of the aggregate statewide direct  
1233 written premium for the subject lines of business for the prior  
1234 calendar year, the entire deficit shall be recovered through  
1235 regular assessments of assessable insurers under paragraph (g)  
1236 and assessable insureds.

1237 b. When the deficit incurred in a particular calendar year  
1238 exceeds 10 percent of the aggregate statewide direct written  
1239 premium for the subject lines of business for the prior calendar  
1240 year, the corporation shall levy regular assessments on  
1241 assessable insurers under paragraph (g) and on assessable  
1242 insureds in an amount equal to the greater of 10 percent of the  
1243 deficit or 10 percent of the aggregate statewide direct written  
1244 premium for the subject lines of business for the prior calendar  
1245 year. Any remaining deficit shall be recovered through emergency  
1246 assessments under sub-subparagraph d.

1247 c. Each assessable insurer's share of the amount being  
1248 assessed under sub-subparagraph a. or sub-subparagraph b. shall  
1249 be in the proportion that the assessable insurer's direct  
1250 written premium for the subject lines of business for the year  
1251 preceding the year in which the deficit is incurred ~~assessment~~  
1252 bears to the aggregate statewide direct written premium for the  
1253 subject lines of business for that year. The assessment

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percentage applicable to each assessable insured is the ratio of the amount being assessed under sub-subparagraph a. or sub-subparagraph b. to the aggregate statewide direct written premium for the subject lines of business for the prior year. Assessments levied by the corporation on assessable insurers under sub-subparagraphs a. and b. shall be paid as required by the corporation's plan of operation and paragraph (g). Any assessment levied by the corporation on limited apportionment companies may be paid to the corporation by such companies over a time period not to exceed 12 months. Notwithstanding any other provision in this subsection, the aggregate amount of a regular assessment levied in connection with a deficit incurred in a particular calendar year shall be reduced by the aggregate amount of the Citizens Property Insurance Corporation policyholder surcharge imposed under subparagraph (c)10. Assessments levied by the corporation on assessable insureds under sub-subparagraphs a. and b. shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and shall be paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to the Florida Surplus Lines Service Office. Upon receipt of regular assessments from surplus lines agents, the Florida Surplus Lines Service Office shall transfer the assessments directly to the corporation as determined by the corporation.

d. Upon a determination by the board of governors that a deficit in an account exceeds the amount that will be recovered through regular assessments under sub-subparagraph a. or sub-subparagraph b., the board shall levy, after verification by the office, emergency assessments, for as many years as necessary to cover the deficits, to be collected by assessable insurers and

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1285 the corporation and collected from assessable insureds upon  
1286 issuance or renewal of policies for subject lines of business,  
1287 excluding National Flood Insurance policies. The amount of the  
1288 emergency assessment collected in a particular year shall be a  
1289 uniform percentage of that year's direct written premium for  
1290 subject lines of business and all accounts of the corporation,  
1291 excluding National Flood Insurance Program policy premiums, as  
1292 annually determined by the board and verified by the office. The  
1293 office shall verify the arithmetic calculations involved in the  
1294 board's determination within 30 days after receipt of the  
1295 information on which the determination was based.  
1296 Notwithstanding any other provision of law, the corporation and  
1297 each assessable insurer that writes subject lines of business  
1298 shall collect emergency assessments from its policyholders  
1299 without such obligation being affected by any credit,  
1300 limitation, exemption, or deferment. Emergency assessments  
1301 levied by the corporation on assessable insureds shall be  
1302 collected by the surplus lines agent at the time the surplus  
1303 lines agent collects the surplus lines tax required by s.  
1304 626.932 and shall be paid to the Florida Surplus Lines Service  
1305 Office at the time the surplus lines agent pays the surplus  
1306 lines tax to the Florida Surplus Lines Service Office. The  
1307 emergency assessments so collected shall be transferred directly  
1308 to the corporation on a periodic basis as determined by the  
1309 corporation and shall be held by the corporation solely in the  
1310 applicable account. The aggregate amount of emergency  
1311 assessments levied for an account under this sub-subparagraph in  
1312 any calendar year may not exceed the greater of 10 percent of  
1313 the amount needed to cover the original deficit, plus interest,  
1314 fees, commissions, required reserves, and other costs associated  
1315 with financing of the original deficit, or 10 percent of the



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1316 aggregate statewide direct written premium for subject lines of  
1317 business and for all accounts of the corporation for the prior  
1318 year, plus interest, fees, commissions, required reserves, and  
1319 other costs associated with financing the original deficit.

1320 e. The corporation may pledge the proceeds of assessments,  
1321 projected recoveries from the Florida Hurricane Catastrophe  
1322 Fund, other insurance and reinsurance recoverables, Citizens  
1323 policyholder ~~market equalization~~ surcharges and other  
1324 surcharges, and other funds available to the corporation as the  
1325 source of revenue for and to secure bonds issued under paragraph  
1326 (g), bonds or other indebtedness issued under subparagraph  
1327 (c)3., or lines of credit or other financing mechanisms issued  
1328 or created under this subsection, or to retire any other debt  
1329 incurred as a result of deficits or events giving rise to  
1330 deficits, or in any other way that the board determines will  
1331 efficiently recover such deficits. The purpose of the lines of  
1332 credit or other financing mechanisms is to provide additional  
1333 resources to assist the corporation in covering claims and  
1334 expenses attributable to a catastrophe. As used in this  
1335 subsection, the term "assessments" includes regular assessments  
1336 under sub-subparagraph a., sub-subparagraph b., or subparagraph  
1337 (g)1. and emergency assessments under sub-subparagraph d.  
1338 Emergency assessments collected under sub-subparagraph d. are  
1339 not part of an insurer's rates, are not premium, and are not  
1340 subject to premium tax, fees, or commissions; however, failure  
1341 to pay the emergency assessment shall be treated as failure to  
1342 pay premium. The emergency assessments under sub-subparagraph d.  
1343 shall continue as long as any bonds issued or other indebtedness  
1344 incurred with respect to a deficit for which the assessment was  
1345 imposed remain outstanding, unless adequate provision has been  
1346 made for the payment of such bonds or other indebtedness

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pursuant to the documents governing such bonds or other indebtedness.

f. As used in this subsection, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds on real or personal property, as defined in s. 624.604, including insurance for fire, industrial fire, allied lines, farmowners multiperil, homeowners multiperil, commercial multiperil, and mobile homes, and including liability coverage on all such insurance, but excluding inland marine as defined in s. 624.607(3) and excluding vehicle insurance as defined in s. 624.605(1) other than insurance on mobile homes used as permanent dwellings.

g. The Florida Surplus Lines Service Office shall determine annually the aggregate statewide written premium in subject lines of business procured by assessable insureds and shall report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.

h. The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for regular assessments and emergency assessments levied under this subparagraph on assessable insureds and shall assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.

4. With respect to a deficit in the nonhomestead account or to any cash flow shortfall that the board determines will create an inability for the nonhomestead account to pay claims when due:

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1377       a. The board shall levy an immediate assessment against  
1378 the premium of each nonhomestead account policyholder, expressed  
1379 as a uniform percentage of the premium for the policy then in  
1380 effect. The maximum amount of such assessment is 100 percent of  
1381 such premium.

1382       b. If the assessment under sub-subparagraph a. is  
1383 insufficient to enable the account to pay claims and eliminate  
1384 the deficit in the account, the board may levy an additional  
1385 assessment to be collected at the time of any issuance or  
1386 renewal of a nonhomestead account policy during the 1-year  
1387 period following the levy of the assessment under sub-  
1388 paragraph a., expressed as a uniform percentage of the  
1389 premium for the policy for the forthcoming policy period. The  
1390 maximum amount of such assessment is 100 percent of such  
1391 premium.

1392       c. If the assessments under sub-subparagraphs a. and b.  
1393 are insufficient to enable the account to pay claims and  
1394 eliminate the deficit in the account, the board may make a loan  
1395 from any of the homestead accounts to the nonhomestead account,  
1396 subject to approval by the office and provided that such loan  
1397 does not impair the financial status of any of the homestead  
1398 accounts.

1399       5. A policyholder in a nonhomestead account who has not  
1400 paid a deficit assessment levied by the corporation shall be  
1401 ineligible for coverage by a surplus lines insurer or authorized  
1402 insurer.

1403       (c) The plan of operation of the corporation:

1404       1. Must provide for adoption of residential property and  
1405 casualty insurance policy forms and commercial residential and  
1406 nonresidential property insurance forms, which forms must be

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approved by the office prior to use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which coverage is more limited than the coverage under a standard policy.

c. Commercial lines residential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the high-risk account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the high-risk account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. that contain more restrictive coverage.

2.a. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as

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defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the quota share primary insurance agreement, may not be altered by the inability of the other party to the agreement to pay its specified percentage of hurricane losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that neither the authorized insurer nor the corporation may be held responsible beyond its specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

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1468           b. The corporation may enter into quota share primary  
1469 insurance agreements with authorized insurers at corporation  
1470 coverage levels of 90 percent and 50 percent.

1471           c. If the corporation determines that additional coverage  
1472 levels are necessary to maximize participation in quota share  
1473 primary insurance agreements by authorized insurers, the  
1474 corporation may establish additional coverage levels. However,  
1475 the corporation's quota share primary insurance coverage level  
1476 may not exceed 90 percent.

1477           d. Any quota share primary insurance agreement entered  
1478 into between an authorized insurer and the corporation must  
1479 provide for a uniform specified percentage of coverage of  
1480 hurricane losses, by county or territory as set forth by the  
1481 corporation board, for all eligible risks of the authorized  
1482 insurer covered under the quota share primary insurance  
1483 agreement.

1484           e. Any quota share primary insurance agreement entered  
1485 into between an authorized insurer and the corporation is  
1486 subject to review and approval by the office. However, such  
1487 agreement shall be authorized only as to insurance contracts  
1488 entered into between an authorized insurer and an insured who is  
1489 already insured by the corporation for wind coverage.

1490           f. For all eligible risks covered under quota share  
1491 primary insurance agreements, the exposure and coverage levels  
1492 for both the corporation and authorized insurers shall be  
1493 reported by the corporation to the Florida Hurricane Catastrophe  
1494 Fund. For all policies of eligible risks covered under quota  
1495 share primary insurance agreements, the corporation and the  
1496 authorized insurer shall maintain complete and accurate records  
1497 for the purpose of exposure and loss reimbursement audits as  
1498 required by Florida Hurricane Catastrophe Fund rules. The

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1499 corporation and the authorized insurer shall each maintain  
1500 duplicate copies of policy declaration pages and supporting  
1501 claims documents.

1502 g. The corporation board shall establish in its plan of  
1503 operation standards for quota share agreements which ensure that  
1504 there is no discriminatory application among insurers as to the  
1505 terms of quota share agreements, pricing of quota share  
1506 agreements, incentive provisions if any, and consideration paid  
1507 for servicing policies or adjusting claims.

1508 h. The quota share primary insurance agreement between the  
1509 corporation and an authorized insurer must set forth the  
1510 specific terms under which coverage is provided, including, but  
1511 not limited to, the sale and servicing of policies issued under  
1512 the agreement by the insurance agent of the authorized insurer  
1513 producing the business, the reporting of information concerning  
1514 eligible risks, the payment of premium to the corporation, and  
1515 arrangements for the adjustment and payment of hurricane claims  
1516 incurred on eligible risks by the claims adjuster and personnel  
1517 of the authorized insurer. Entering into a quota sharing  
1518 insurance agreement between the corporation and an authorized  
1519 insurer shall be voluntary and at the discretion of the  
1520 authorized insurer.

1521 3. May provide that the corporation may employ or  
1522 otherwise contract with individuals or other entities to provide  
1523 administrative or professional services that may be appropriate  
1524 to effectuate the plan. The corporation shall have the power to  
1525 borrow funds, by issuing bonds or by incurring other  
1526 indebtedness, and shall have other powers reasonably necessary  
1527 to effectuate the requirements of this subsection, including,  
1528 without limitation, the power to issue bonds and incur other  
1529 indebtedness in order to refinance outstanding bonds or other

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indebtedness. The corporation may, but is not required to, seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (g)2., in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation is authorized to take all actions needed to facilitate tax-free status for any such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation shall have the authority to pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, market equalization and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4.a. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of 8 individuals who are residents of this state, from different geographical areas of this state. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board, effective August 1, 2005. At least one of the two



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members appointed by each appointing officer must have demonstrated expertise in insurance. The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. Any board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board of governors in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board, as recommended by the Chief Financial Officer, and serve at the pleasure of the board. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board and the Chief Financial Officer.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage. The members of the advisory committee shall consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of

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Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members must serve for 3-year terms and may serve for consecutive terms. The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to the provisions of s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under either a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, the risk is not eligible for any policy issued by the corporation. If the risk is not able to obtain any such offer, the risk is eligible for either a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk shall be eligible for a basic policy including wind coverage unless rejected under subparagraph 8. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

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(I) If the risk accepts an offer of coverage through the market assistance plan or an offer of coverage through a mechanism established by the corporation before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-paragraph (A).

(II) When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record of the corporation policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

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(B) Offer to allow the producing agent of record of the corporation policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for any policy issued by the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation.

(I) If the risk accepts an offer of coverage through the market assistance plan or an offer of coverage through a mechanism established by the corporation before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the

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insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record of the corporation policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the corporation policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. To preserve existing incentives for carriers to write dwellings in the voluntary market and not in the corporation, the corporation shall continue to offer authorized insurers, including insurers writing dwellings valued at \$1 million or more, the same voluntary writing credits that were available on January 1, 2006, to carriers writing wind coverage for dwellings in the areas eligible for coverage in the high-risk account.

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1715 d. With respect to personal lines residential risks, if  
1716 the risk is a dwelling with an insured value of \$1 million or  
1717 more, or if the risk is one that is excluded from the coverage  
1718 to be provided by the condominium association under s.  
1719 718.111(11)(b) and that is insured by the condominium unit owner  
1720 for a combined dwelling and contents replacement cost of \$1  
1721 million or more, the risk is not eligible for any policy issued  
1722 by the corporation. Rates and forms for personal lines  
1723 residential risks not eligible for coverage by the corporation  
1724 specified by this sub-subparagraph are not subject to ss.  
1725 627.062 and 627.0629. Such rates and forms are subject to all  
1726 other applicable provisions of this code and rules adopted under  
1727 this code. During the course of an insurer's market conduct  
1728 examination, the office may review the rate for any risk to  
1729 which the provisions of this sub-subparagraph are applicable to  
1730 determine if such rate is inadequate or unfairly discriminatory.  
1731 Rates on personal lines residential risks not eligible for  
1732 coverage by the corporation may be found inadequate by the  
1733 office if they are clearly insufficient, together with the  
1734 investment income attributable to such risks, to sustain  
1735 projected losses and expenses in the class of business to which  
1736 such rates apply. Rates on personal lines residential risks not  
1737 eligible for coverage by the corporation may also be found  
1738 inadequate as to the premium charged to a risk or group of risks  
1739 if discounts or credits are allowed that exceed a reasonable  
1740 reflection of expense savings and reasonably expected loss  
1741 experience from the risk or group of risks. Rates on personal  
1742 lines residential risks not eligible for coverage by the  
1743 corporation may be found to be unfairly discriminatory as to a  
1744 risk or group of risks by the office if the application of  
1745 premium discounts, credits, or surcharges among such risks does

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1746 not bear a reasonable relationship to the expected loss and  
1747 expense experience among the various risks. A rating plan,  
1748 including discounts, credits, or surcharges on personal lines  
1749 residential risks not eligible for coverage by the corporation  
1750 may also be found to be unfairly discriminatory if the plan  
1751 fails to clearly and equitably reflect consideration of the  
1752 policyholder's participation in a risk management program  
1753 adjusted pursuant to s. 627.0625. The office may order an  
1754 insurer to discontinue using a rate for new policies or upon  
1755 renewal of a policy if the office finds the rate to be  
1756 inadequate or unfairly discriminatory. Insurers must maintain  
1757 records and documentation relating to rates and forms subject to  
1758 this sub-subparagraph for a period of at least 5 years after the  
1759 effective date of the policy.

1760 e. For policies subject to nonrenewal as a result of the  
1761 risk being no longer eligible for coverage pursuant to sub-  
1762 paragraph d., the corporation shall, directly or through the  
1763 market assistance plan, make information from confidential  
1764 underwriting and claims files of policyholders available only to  
1765 licensed general lines agents who register with the corporation  
1766 to receive such information according to the following  
1767 procedures:

1768 (I) By August 1, 2006, the corporation shall provide  
1769 policyholders who are not eligible for renewal pursuant to sub-  
1770 paragraph d. the opportunity to request in writing, within 30  
1771 days after the notification is sent, that information from their  
1772 confidential underwriting and claims files not be released to  
1773 licensed general lines agents registered pursuant to sub-sub-  
1774 paragraph e.(II);

1775 (II) By August 1, 2006, the corporation shall make  
1776 available to licensed general lines agents the registration

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1777 procedures to be used to obtain confidential information from  
1778 underwriting and claims files for policies not eligible for  
1779 renewal pursuant to sub-subparagraph d. As a condition of  
1780 registration, the corporation shall require the licensed general  
1781 lines agent to attest that the agent has the experience and  
1782 relationships with authorized or surplus lines carriers to  
1783 attempt to offer replacement coverage for policies not eligible  
1784 for renewal pursuant to sub-subparagraph d.

1785 (III) By September 1, 2006, the corporation shall make  
1786 available through a secured website to licensed general lines  
1787 agents registered pursuant to sub-sub-subparagraph e.(II)  
1788 application, rating, loss history, mitigation, and policy type  
1789 information relating to all policies not eligible for renewal  
1790 pursuant to sub-subparagraph d. and for which the policyholder  
1791 has not requested the corporation withhold such information  
1792 pursuant to sub-sub-subparagraph e.(I). The licensed general  
1793 lines agent registered pursuant to sub-sub-subparagraph e.(II)  
1794 may use such information to contact and assist the policyholder  
1795 in securing replacement policies and the agent may disclose to  
1796 the policyholder such information was obtained from the  
1797 corporation.

1798 f. With respect to nonhomestead property, eligibility must  
1799 be determined in accordance with sub-sub-sub-subparagraph  
1800 (b)2.a.(II)(A).

1801 6. Must include rules for classifications of risks and  
1802 rates therefor.

1803 7. Must provide that if premium and investment income for  
1804 an account attributable to a particular calendar year are in  
1805 excess of projected losses and expenses for the account  
1806 attributable to that year, such excess shall be held in surplus  
1807 in the account. Such surplus shall be available to defray



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deficits in that account as to future years and shall be used for that purpose prior to assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied for all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following shall be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 shall not apply.

9. Must provide that the corporation shall make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss in the homestead accounts as determined by the board of governors.

10. Must provide that in the event of regular deficit assessments under sub-subparagraph (b)3.a. or sub-subparagraph (b)3.b., in the personal lines homestead account, the commercial lines residential homestead account, or the high-risk homestead account, the corporation shall levy upon corporation homestead account policyholders in its next rate filing, or by a separate rate filing solely for this purpose, a Citizens policyholder ~~market equalization~~ surcharge arising from a regular assessment in such account in a percentage equal to the total amount of such regular assessments divided by the aggregate statewide

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1839 direct written premium for subject lines of business for the  
1840 ~~prior calendar~~ year preceding the year in which the deficit to  
1841 which the regular assessment related is incurred. Citizens  
1842 policyholder Market equalization surcharges under this  
1843 subparagraph are not considered premium and are not subject to  
1844 commissions, fees, or premium taxes; however, failure to pay the  
1845 Citizens policyholder a market equalization surcharge shall be  
1846 treated as failure to pay premium. Notwithstanding any other  
1847 provision of this section, for purposes of the Citizens  
1848 policyholder surcharges to be levied pursuant to this  
1849 subparagraph, the total amount of the regular assessment to  
1850 which such Citizens policyholder surcharge relates shall be  
1851 determined as set forth in sub-subparagraphs (b)3.a., b., and c.

1852 11. The policies issued by the corporation must provide  
1853 that, if the corporation or the market assistance plan obtains  
1854 an offer from an authorized insurer to cover the risk at its  
1855 approved rates, the risk is no longer eligible for renewal  
1856 through the corporation.

1857 12. Corporation policies and applications must include a  
1858 notice that the corporation policy could, under this section, be  
1859 replaced with a policy issued by an authorized insurer that does  
1860 not provide coverage identical to the coverage provided by the  
1861 corporation or an insurer writing coverage pursuant to part VIII  
1862 of chapter 626. The notice shall also specify that acceptance of  
1863 corporation coverage creates a conclusive presumption that the  
1864 applicant or policyholder is aware of this potential.

1865 13. May establish, subject to approval by the office,  
1866 different eligibility requirements and operational procedures  
1867 for any line or type of coverage for any specified county or  
1868 area if the board determines that such changes to the  
1869 eligibility requirements and operational procedures are

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justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods would continue to have access to coverage from the corporation. When coverage is sought in connection with a real property transfer, such requirements and procedures shall not provide for an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

14. Must provide that, with respect to the high-risk homestead account, any assessable insurer with a surplus as to policyholders of \$25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. ~~In no event shall a limited apportionment company be required to participate in the portion of any assessment, within the high-risk account, pursuant to sub-subparagraph (b)3.a. or sub-subparagraph (b)3.b. in the aggregate which exceeds \$50 million after payment of available high-risk account funds in any calendar year. However,~~ A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan shall provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (g)4. However, there shall be no limitation or deferment of an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d.

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15. Must provide that the corporation appoint as its licensed agents only those agents who also hold an appointment as defined in s. 626.015(3) with an insurer who at the time of the agent's initial appointment by the corporation is authorized to write and is actually writing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

16. Must provide that the hurricane deductible for any property in the nonhomestead account with an insured value of \$250,000 or more must be at least 5 percent of the insured value.

17. Must provide that the application for coverage under the nonhomestead account and the declaration page of each nonhomestead account policy include a statement in boldface 12-point type specifying that public subsidies do not support the corporation's coverage of nonhomestead property; that if the nonhomestead account of the corporation sustains a deficit or is unable to pay claims, the nonhomestead policyholder shall be subject to an immediate assessment in an amount up to 100 percent of the premium and a further assessment upon renewal of the policy; and that the applicant or policyholder may wish to seek alternative coverage from an authorized insurer or surplus lines insurer that will not be subject to such potential assessments.

18. Must provide that the application for coverage under any of the homestead accounts and the declaration page of each homestead account policy include a statement in boldface 12-point type specifying that a false declaration of homestead status for purposes of obtaining coverage in any of the homestead accounts may constitute the offense of insurance

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1930 fraud, as prohibited and punishable as a felony under s.  
1931 817.234.

1932 19. Must limit coverage on mobile or manufactured homes  
1933 built prior to 1994 to actual cash value of the dwelling rather  
1934 than replacement costs of the dwelling.

1935 (d)1.a. It is the intent of the Legislature that the rates  
1936 for coverage provided by the corporation be actuarially adequate  
1937 ~~sound~~ and not competitive with approved rates charged in the  
1938 admitted voluntary market, so that the corporation functions as  
1939 a residual market mechanism to provide insurance only when the  
1940 insurance cannot be procured in the voluntary market. Rates  
1941 shall include a residual market risk load that reflects the  
1942 concentrated exposure of the corporation and the impact of  
1943 adverse selection as well as an appropriate catastrophe loading  
1944 factor that reflects the actual catastrophic exposure of the  
1945 corporation.

1946 b. It is the intent of the Legislature to reaffirm the  
1947 requirement of rate adequacy in the residual market. Recognizing  
1948 that rates may comply with the intent expressed in sub-  
1949 subparagraph a. and yet be inadequate and recognizing the public  
1950 need to limit subsidies within the residual market, it is the  
1951 further intent of the Legislature to establish statutory  
1952 standards for rate adequacy. Such standards are intended to  
1953 supplement the standard specified in s. 627.062(2)(e)3.,  
1954 providing that rates are inadequate if they are clearly  
1955 insufficient to sustain projected losses and expenses in the  
1956 class of business to which they apply.

1957 2. For each county, the average rates of the corporation  
1958 for each line of business for personal lines residential  
1959 policies excluding rates for wind-only policies shall be no  
1960 lower than the average rates charged by the insurer that had the

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highest average rate in that county among the 20 insurers with the greatest total direct written premium in the state for that line of business in the preceding year, except that with respect to mobile home coverages, the average rates of the corporation shall be no lower than the average rates charged by the insurer that had the highest average rate in that county among the 5 insurers with the greatest total written premium for mobile home owner's policies in the state in the preceding year.

3. Rates for personal lines residential wind-only policies must be actuarially adequate ~~sound~~ and not competitive with approved rates charged by authorized insurers. If the filing under this paragraph is made at least 90 days before the proposed effective date and the filing is not implemented during the office's review of the filing and any proceeding and judicial review, then such filing shall be considered a "file and use" filing. In such case, the office shall finalize its review by issuance of a notice of intent to approve or a notice of intent to disapprove within 90 days after receipt of the filing. The notice of intent to approve and the notice of intent to disapprove constitute agency action for purposes of the Administrative Procedure Act. Requests for supporting information, requests for mathematical or mechanical corrections, or notification to the insurer by the office of its preliminary findings shall not toll the 90-day period during any such proceedings and subsequent judicial review. The rate shall be deemed approved if the office does not issue a notice of intent to approve or a notice of intent to disapprove within 90 days after receipt of the filing. Corporation rate manuals shall include a rate surcharge for seasonal occupancy. To ensure that personal lines residential wind-only rates are not competitive with approved rates charged by authorized insurers, the

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corporation, in conjunction with the office, shall develop a wind-only ratemaking methodology, which methodology shall be contained in each rate filing made by the corporation with the office. If the office determines that the wind-only rates or rating factors filed by the corporation fail to comply with the wind-only ratemaking methodology provided for in this subsection, it shall so notify the corporation and require the corporation to amend its rates or rating factors to come into compliance within 90 days of notice from the office.

4. For the purposes of establishing a pilot program to evaluate issues relating to the availability and affordability of insurance in an area where historically there has been little market competition, the provisions of subparagraph 2. do not apply to coverage provided by the corporation in Monroe County if the office determines that a reasonable degree of competition does not exist for personal lines residential policies. The provisions of subparagraph 3. do not apply to coverage provided by the corporation in Monroe County if the office determines that a reasonable degree of competition does not exist for personal lines residential policies in the area of that county which is eligible for wind-only coverage. In this county, the rates for personal lines residential coverage shall be actuarially adequate ~~sound~~ and not excessive, inadequate, or unfairly discriminatory and are subject to the other provisions of the paragraph and s. 627.062. The commission shall adopt rules establishing the criteria for determining whether a reasonable degree of competition exists for personal lines residential policies in Monroe County. By March 1, 2006, the office shall submit a report to the Legislature providing an evaluation of the implementation of the pilot program affecting Monroe County. Any proposed rate increase filed by the

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2023 corporation after May 1, 2006 but before October 1, 2006 for  
2024 Monroe County based upon actuarial adequacy shall be implemented  
2025 in equal amounts over a period of three years.

2026 5. Rates for commercial lines coverage shall not be  
2027 subject to the requirements of subparagraph 2., but shall be  
2028 subject to all other requirements of this paragraph and s.  
2029 627.062.

2030 6.a. Nothing in this paragraph shall require or allow the  
2031 corporation to adopt a rate that is inadequate under s. 627.062  
2032 or under sub-subparagraph b. or sub-subparagraph c.

2033 b. With respect to rates for coverage in any homestead  
2034 account, a rate is deemed inadequate if the rate is not  
2035 sufficient to generate, by means of cash flow, procurement of  
2036 coverage under the Florida Hurricane Catastrophe Fund,  
2037 reinsurance costs whether or not reinsurance is procured, and  
2038 investment income, moneys sufficient to pay all claims and  
2039 expenses reasonably expected to result from a 100-year probable  
2040 maximum loss event without resort to any regular or emergency  
2041 assessments, long-term debt, state revenues, or other funding  
2042 sources that reflect any subsidy from persons or entities other  
2043 than corporation homestead accounts policyholders.

2044 c. With respect to rates for coverage in the nonhomestead  
2045 account, a rate is deemed inadequate if the rate is not  
2046 sufficient to generate, by means of cash flow, procurement of  
2047 coverage under the Florida Hurricane Catastrophe Fund  
2048 reinsurance costs whether or not reinsurance is procured and  
2049 investment income, moneys sufficient to pay all claims and  
2050 expenses reasonably expected to result from a 250-year probable  
2051 maximum loss event without resort to any assessments, debt,  
2052 state revenues, or other funding sources that reflect any



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2053 subsidy from persons or entities other than corporation  
2054 nonhomestead account policyholders.

2055 7. The corporation shall certify to the office at least  
2056 twice annually that its personal lines rates comply with the  
2057 requirements of subparagraphs 1., ~~and 2.~~, and 6. If any  
2058 adjustment in the rates or rating factors of the corporation is  
2059 necessary to ensure such compliance, the corporation shall make  
2060 and implement such adjustments and file its revised rates and  
2061 rating factors with the office. If the office thereafter  
2062 determines that the revised rates and rating factors fail to  
2063 comply with the provisions of subparagraphs 1. and 2., it shall  
2064 notify the corporation and require the corporation to amend its  
2065 rates or rating factors in conjunction with its next rate  
2066 filing. The office must notify the corporation by electronic  
2067 means of any rate filing it approves for any insurer among the  
2068 insurers referred to in subparagraph 2.

2069 8. In addition to the rates otherwise determined pursuant  
2070 to this paragraph, the corporation shall impose and collect an  
2071 amount equal to the premium tax provided for in s. 624.509 to  
2072 augment the financial resources of the corporation.

2073 ~~9.a. To assist the corporation in developing additional~~  
2074 ~~ratemaking methods to assure compliance with subparagraphs 1.~~  
2075 ~~and 4., the corporation shall appoint a rate methodology panel~~  
2076 ~~consisting of one person recommended by the Florida Association~~  
2077 ~~of Insurance Agents, one person recommended by the Professional~~  
2078 ~~Insurance Agents of Florida, one person recommended by the~~  
2079 ~~Florida Association of Insurance and Financial Advisors, one~~  
2080 ~~person recommended by the insurer with the highest voluntary~~  
2081 ~~market share of residential property insurance business in the~~  
2082 ~~state, one person recommended by the insurer with the second-~~  
2083 ~~highest voluntary market share of residential property insurance~~

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~~business in the state, one person recommended by an insurer writing commercial residential property insurance in this state, one person recommended by the Office of Insurance Regulation, and one board member designated by the board chairman, who shall serve as chairman of the panel.~~

~~b. By January 1, 2004, the rate methodology panel shall provide a report to the corporation of its findings and recommendations for the use of additional ratemaking methods and procedures, including the use of a rate equalization surcharge in an amount sufficient to assure that the total cost of coverage for policyholders or applicants to the corporation is sufficient to comply with subparagraph 1.~~

~~c. Within 30 days after such report, the corporation shall present to the President of the Senate, the Speaker of the House of Representatives, the minority party leaders of each house of the Legislature, and the chairs of the standing committees of each house of the Legislature having jurisdiction of insurance issues, a plan for implementing the additional ratemaking methods and an outline of any legislation needed to facilitate use of the new methods.~~

~~d. The plan must include a provision that producer commissions paid by the corporation shall not be calculated in such a manner as to include any rate equalization surcharge. However, without regard to the plan to be developed or its implementation, producer commissions paid by the corporation for each account, other than the quota share primary program, shall remain fixed as to percentage, effective rate, calculation, and payment method until January 1, 2004.~~

~~9.10. By January 1, 2004, The corporation shall provide develop a notice to policyholders or applicants that the rates of Citizens Property Insurance Corporation are intended to be~~

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2115 higher than the rates of any admitted carrier and providing  
2116 other information the corporation deems necessary to assist  
2117 consumers in finding other voluntary admitted insurers willing  
2118 to insure their property.

2119 (e) If coverage in an account is deactivated pursuant to  
2120 paragraph (f), coverage through the corporation shall be  
2121 reactivated by order of the office only under one of the  
2122 following circumstances:

2123 1. If the market assistance plan receives a minimum of 100  
2124 applications for coverage within a 3-month period, or 200  
2125 applications for coverage within a 1-year period or less for  
2126 residential coverage, unless the market assistance plan provides  
2127 a quotation from admitted carriers at their filed rates for at  
2128 least 90 percent of such applicants. Any market assistance plan  
2129 application that is rejected because an individual risk is so  
2130 hazardous as to be uninsurable using the criteria specified in  
2131 subparagraph (c)8. shall not be included in the minimum  
2132 percentage calculation provided herein. In the event that there  
2133 is a legal or administrative challenge to a determination by the  
2134 office that the conditions of this subparagraph have been met  
2135 for eligibility for coverage in the corporation, any eligible  
2136 risk may obtain coverage during the pendency of such challenge.

2137 2. In response to a state of emergency declared by the  
2138 Governor under s. 252.36, the office may activate coverage by  
2139 order for the period of the emergency upon a finding by the  
2140 office that the emergency significantly affects the availability  
2141 of residential property insurance.

2142 (f)1. The corporation shall file with the office quarterly  
2143 statements of financial condition, an annual statement of  
2144 financial condition, and audited financial statements in the  
2145 manner prescribed by law. In addition, the corporation shall

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2146 report to the office monthly on the types, premium, exposure,  
2147 and distribution by county of its policies in force, and shall  
2148 submit other reports as the office requires to carry out its  
2149 oversight of the corporation.

2150 2. The activities of the corporation shall be reviewed at  
2151 least annually by the office to determine whether coverage shall  
2152 be deactivated in an account on the basis that the conditions  
2153 giving rise to its activation no longer exist.

2154 (g)1. The corporation shall certify to the office its  
2155 needs for annual assessments as to a particular calendar year,  
2156 and for any interim assessments that it deems to be necessary to  
2157 sustain operations as to a particular year pending the receipt  
2158 of annual assessments. Upon verification, the office shall  
2159 approve such certification, and the corporation shall levy such  
2160 annual or interim assessments. Such assessments shall be  
2161 prorated as provided in paragraph (b). The corporation shall  
2162 take all reasonable and prudent steps necessary to collect the  
2163 amount of assessment due from each assessable insurer,  
2164 including, if prudent, filing suit to collect such assessment.  
2165 If the corporation is unable to collect an assessment from any  
2166 assessable insurer, the uncollected assessments shall be levied  
2167 as an additional assessment against the assessable insurers and  
2168 any assessable insurer required to pay an additional assessment  
2169 as a result of such failure to pay shall have a cause of action  
2170 against such nonpaying assessable insurer. Assessments shall be  
2171 included as an appropriate factor in the making of rates. The  
2172 failure of a surplus lines agent to collect and remit any  
2173 regular or emergency assessment levied by the corporation is  
2174 considered to be a violation of s. 626.936 and subjects the  
2175 surplus lines agent to the penalties provided in that section.

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2176           2. The governing body of any unit of local government, any  
2177 residents of which are insured by the corporation, may issue  
2178 bonds as defined in s. 125.013 or s. 166.101 from time to time  
2179 to fund an assistance program, in conjunction with the  
2180 corporation, for the purpose of defraying deficits of the  
2181 corporation. In order to avoid needless and indiscriminate  
2182 proliferation, duplication, and fragmentation of such assistance  
2183 programs, any unit of local government, any residents of which  
2184 are insured by the corporation, may provide for the payment of  
2185 losses, regardless of whether or not the losses occurred within  
2186 or outside of the territorial jurisdiction of the local  
2187 government. Revenue bonds under this subparagraph may not be  
2188 issued until validated pursuant to chapter 75, unless a state of  
2189 emergency is declared by executive order or proclamation of the  
2190 Governor pursuant to s. 252.36 making such findings as are  
2191 necessary to determine that it is in the best interests of, and  
2192 necessary for, the protection of the public health, safety, and  
2193 general welfare of residents of this state and declaring it an  
2194 essential public purpose to permit certain municipalities or  
2195 counties to issue such bonds as will permit relief to claimants  
2196 and policyholders of the corporation. Any such unit of local  
2197 government may enter into such contracts with the corporation  
2198 and with any other entity created pursuant to this subsection as  
2199 are necessary to carry out this paragraph. Any bonds issued  
2200 under this subparagraph shall be payable from and secured by  
2201 moneys received by the corporation from emergency assessments  
2202 under sub-subparagraph (b)3.d., and assigned and pledged to or  
2203 on behalf of the unit of local government for the benefit of the  
2204 holders of such bonds. The funds, credit, property, and taxing  
2205 power of the state or of the unit of local government shall not  
2206 be pledged for the payment of such bonds. If any of the bonds

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remain unsold 60 days after issuance, the office shall require all insurers subject to assessment to purchase the bonds, which shall be treated as admitted assets; each insurer shall be required to purchase that percentage of the unsold portion of the bond issue that equals the insurer's relative share of assessment liability under this subsection. An insurer shall not be required to purchase the bonds to the extent that the office determines that the purchase would endanger or impair the solvency of the insurer.

3.a. The corporation shall adopt one or more programs subject to approval by the office for the reduction of both new and renewal writings in the corporation. Beginning January 1, 2008, any program the corporation adopts for the payment of bonuses to an insurer for each risk the insurer removes from the corporation shall comply with s. 627.3511(2) and may not exceed the amount referenced in s. 627.3511(2) for each risk removed.

The corporation may consider any prudent and not unfairly discriminatory approach to reducing corporation writings, and may adopt a credit against assessment liability or other liability that provides an incentive for insurers to take risks out of the corporation and to keep risks out of the corporation by maintaining or increasing voluntary writings in counties or areas in which corporation risks are highly concentrated and a program to provide a formula under which an insurer voluntarily taking risks out of the corporation by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments under sub-subparagraphs (b)3.a. and b. When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on such policy, and the insurer shall either:

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(I) Pay to the producing agent of record of the policy, for the first year, an amount which is the greater of the insurer's usual and customary commission for the type of policy written or a policy fee equal to the usual and customary commission of the corporation; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the insurer's usual and customary commission for the type of policy written. If the producing agent is unwilling or unable to accept appointment by the new insurer, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

b. Any credit or exemption from regular assessments adopted under this subparagraph shall last no longer than the 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies so removed.

c. There shall be no credit, limitation, exemption, or deferment from emergency assessments to be collected from policyholders pursuant to sub-subparagraph (b)3.d.

4. The plan shall provide for the deferment, in whole or in part, of the assessment of an assessable insurer, other than an emergency assessment collected from policyholders pursuant to sub-subparagraph (b)3.d., if the office finds that payment of the assessment would endanger or impair the solvency of the insurer. In the event an assessment against an assessable insurer is deferred in whole or in part, the amount by which

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2269 such assessment is deferred may be assessed against the other  
2270 assessable insurers in a manner consistent with the basis for  
2271 assessments set forth in paragraph (b).

2272 (h) Nothing in this subsection shall be construed to  
2273 preclude the issuance of residential property insurance coverage  
2274 pursuant to part VIII of chapter 626.

2275 (i) There shall be no liability on the part of, and no  
2276 cause of action of any nature shall arise against, any  
2277 assessable insurer or its agents or employees, the corporation  
2278 or its agents or employees, members of the board of governors or  
2279 their respective designees at a board meeting, corporation  
2280 committee members, or the office or its representatives, for any  
2281 action taken by them in the performance of their duties or  
2282 responsibilities under this subsection. Such immunity does not  
2283 apply to:

2284 1. Any of the foregoing persons or entities for any  
2285 willful tort;

2286 2. The corporation or its producing agents for breach of  
2287 any contract or agreement pertaining to insurance coverage;

2288 3. The corporation with respect to issuance or payment of  
2289 debt; or

2290 4. Any assessable insurer with respect to any action to  
2291 enforce an assessable insurer's obligations to the corporation  
2292 under this subsection.

2293 (j) For the purposes of s. 199.183(1), the corporation  
2294 shall be considered a political subdivision of the state and  
2295 shall be exempt from the corporate income tax. The premiums,  
2296 assessments, investment income, and other revenue of the  
2297 corporation are funds received for providing property insurance  
2298 coverage as required by this subsection, paying claims for  
2299 Florida citizens insured by the corporation, securing and



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2300 repaying debt obligations issued by the corporation, and  
2301 conducting all other activities of the corporation, and shall  
2302 not be considered taxes, fees, licenses, or charges for services  
2303 imposed by the Legislature on individuals, businesses, or  
2304 agencies outside state government. Bonds and other debt  
2305 obligations issued by or on behalf of the corporation are not to  
2306 be considered "state bonds" within the meaning of s. 215.58(8).  
2307 The corporation is not subject to the procurement provisions of  
2308 chapter 287, and policies and decisions of the corporation  
2309 relating to incurring debt, levying of assessments and the sale,  
2310 issuance, continuation, terms and claims under corporation  
2311 policies, and all services relating thereto, are not subject to  
2312 the provisions of chapter 120. The corporation is not required  
2313 to obtain or to hold a certificate of authority issued by the  
2314 office, nor is it required to participate as a member insurer of  
2315 the Florida Insurance Guaranty Association. However, the  
2316 corporation is required to pay, in the same manner as an  
2317 authorized insurer, assessments pledged by the Florida Insurance  
2318 Guaranty Association to secure bonds issued or other  
2319 indebtedness incurred to pay covered claims arising from insurer  
2320 insolvencies caused by, or proximately related to, hurricane  
2321 losses. It is the intent of the Legislature that the tax  
2322 exemptions provided in this paragraph will augment the financial  
2323 resources of the corporation to better enable the corporation to  
2324 fulfill its public purposes. Any debt obligations ~~bonds~~ issued  
2325 by the corporation, their transfer, and the income therefrom,  
2326 including any profit made on the sale thereof, shall at all  
2327 times be free from taxation of every kind by the state and any  
2328 political subdivision or local unit or other instrumentality  
2329 thereof; however, this exemption does not apply to any tax

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imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations other than the corporation.

(k) Upon a determination by the office that the conditions giving rise to the establishment and activation of the corporation no longer exist, the corporation is dissolved. Upon dissolution, the assets of the corporation shall be applied first to pay all debts, liabilities, and obligations of the corporation, including the establishment of reasonable reserves for any contingent liabilities or obligations, and all remaining assets of the corporation shall become property of the state and shall be deposited in the Florida Hurricane Catastrophe Fund. However, no dissolution shall take effect as long as the corporation has bonds or other financial obligations outstanding unless adequate provision has been made for the payment of the bonds or other financial obligations pursuant to the documents authorizing the issuance of the bonds or other financial obligations.

(1)1. Effective July 1, 2002, policies of the Residential Property and Casualty Joint Underwriting Association shall become policies of the corporation. All obligations, rights, assets and liabilities of the Residential Property and Casualty Joint Underwriting Association, including bonds, note and debt obligations, and the financing documents pertaining to them become those of the corporation as of July 1, 2002. The corporation is not required to issue endorsements or certificates of assumption to insureds during the remaining term of in-force transferred policies.

2. Effective July 1, 2002, policies of the Florida Windstorm Underwriting Association are transferred to the corporation and shall become policies of the corporation. All obligations, rights, assets, and liabilities of the Florida

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Windstorm Underwriting Association, including bonds, note and debt obligations, and the financing documents pertaining to them are transferred to and assumed by the corporation on July 1, 2002. The corporation is not required to issue endorsement or certificates of assumption to insureds during the remaining term of in-force transferred policies.

3. The Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association shall take all actions as may be proper to further evidence the transfers and shall provide the documents and instruments of further assurance as may reasonably be requested by the corporation for that purpose. The corporation shall execute assumptions and instruments as the trustees or other parties to the financing documents of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association may reasonably request to further evidence the transfers and assumptions, which transfers and assumptions, however, are effective on the date provided under this paragraph whether or not, and regardless of the date on which, the assumptions or instruments are executed by the corporation. Subject to the relevant financing documents pertaining to their outstanding bonds, notes, indebtedness, or other financing obligations, the moneys, investments, receivables, choses in action, and other intangibles of the Florida Windstorm Underwriting Association shall be credited to the high-risk account of the corporation, and those of the personal lines residential coverage account and the commercial lines residential coverage account of the Residential Property and Casualty Joint Underwriting Association shall be credited to the personal lines account and the commercial lines account, respectively, of the corporation.

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2392       ~~4. Effective July 1, 2002, a new applicant for property~~  
2393 ~~insurance coverage who would otherwise have been eligible for~~  
2394 ~~coverage in the Florida Windstorm Underwriting Association is~~  
2395 ~~eligible for coverage from the corporation as provided in this~~  
2396 ~~subsection.~~

2397       4.5. The transfer of all policies, obligations, rights,  
2398 assets, and liabilities from the Florida Windstorm Underwriting  
2399 Association to the corporation and the renaming of the  
2400 Residential Property and Casualty Joint Underwriting Association  
2401 as the corporation shall in no way affect the coverage with  
2402 respect to covered policies as defined in s. 215.555(2)(c)  
2403 provided to these entities by the Florida Hurricane Catastrophe  
2404 Fund. The coverage provided by the Florida Hurricane Catastrophe  
2405 Fund to the Florida Windstorm Underwriting Association based on  
2406 its exposures as of June 30, 2002, and each June 30 thereafter  
2407 shall be redesignated as coverage for the high-risk account of  
2408 the corporation. Notwithstanding any other provision of law, the  
2409 coverage provided by the Florida Hurricane Catastrophe Fund to  
2410 the Residential Property and Casualty Joint Underwriting  
2411 Association based on its exposures as of June 30, 2002, and each  
2412 June 30 thereafter shall be transferred to the personal lines  
2413 account and the commercial lines account of the corporation.  
2414 Notwithstanding any other provision of law, the high-risk  
2415 account shall be treated, for all Florida Hurricane Catastrophe  
2416 Fund purposes, as if it were a separate participating insurer  
2417 with its own exposures, reimbursement premium, and loss  
2418 reimbursement. Likewise, the personal lines and commercial lines  
2419 accounts shall be viewed together, for all Florida Hurricane  
2420 Catastrophe Fund purposes, as if the two accounts were one and  
2421 represent a single, separate participating insurer with its own  
2422 exposures, reimbursement premium, and loss reimbursement. The

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coverage provided by the Florida Hurricane Catastrophe Fund to the corporation shall constitute and operate as a full transfer of coverage from the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting to the corporation.

(m) Notwithstanding any other provision of law:

1. The pledge or sale of, the lien upon, and the security interest in any rights, revenues, or other assets of the corporation created or purported to be created pursuant to any financing documents to secure any bonds or other indebtedness of the corporation shall be and remain valid and enforceable, notwithstanding the commencement of and during the continuation of, and after, any rehabilitation, insolvency, liquidation, bankruptcy, receivership, conservatorship, reorganization, or similar proceeding against the corporation under the laws of this state.

2. No such proceeding shall relieve the corporation of its obligation, or otherwise affect its ability to perform its obligation, to continue to collect, or levy and collect, assessments, Citizens policyholder ~~market equalization~~ or other surcharges under subparagraph (c)10., or any other rights, revenues, or other assets of the corporation pledged pursuant to any financing documents.

3. Each such pledge or sale of, lien upon, and security interest in, including the priority of such pledge, lien, or security interest, any such assessments, market equalization or other surcharges, or other rights, revenues, or other assets which are collected, or levied and collected, after the commencement of and during the pendency of, or after, any such proceeding shall continue unaffected by such proceeding. As used in this subsection, the term "financing documents" means any

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2454 agreement or agreements, instrument or instruments, or other  
2455 document or documents now existing or hereafter created  
2456 evidencing any bonds or other indebtedness of the corporation or  
2457 pursuant to which any such bonds or other indebtedness has been  
2458 or may be issued and pursuant to which any rights, revenues, or  
2459 other assets of the corporation are pledged or sold to secure  
2460 the repayment of such bonds or indebtedness, together with the  
2461 payment of interest on such bonds or such indebtedness, or the  
2462 payment of any other obligation or financial product, as defined  
2463 in the plan of operation of the corporation related to such  
2464 bonds or indebtedness.

2465       4. Any such pledge or sale of assessments, revenues,  
2466 contract rights, or other rights or assets of the corporation  
2467 shall constitute a lien and security interest, or sale, as the  
2468 case may be, that is immediately effective and attaches to such  
2469 assessments, revenues, or contract rights or other rights or  
2470 assets, whether or not imposed or collected at the time the  
2471 pledge or sale is made. Any such pledge or sale is effective,  
2472 valid, binding, and enforceable against the corporation or other  
2473 entity making such pledge or sale, and valid and binding against  
2474 and superior to any competing claims or obligations owed to any  
2475 other person or entity, including policyholders in this state,  
2476 asserting rights in any such assessments, revenues, or contract  
2477 rights or other rights or assets to the extent set forth in and  
2478 in accordance with the terms of the pledge or sale contained in  
2479 the applicable financing documents, whether or not any such  
2480 person or entity has notice of such pledge or sale and without  
2481 the need for any physical delivery, recordation, filing, or  
2482 other action.

2483       5. As long as the corporation has any bonds outstanding,  
2484 the corporation shall not have the authority to file a voluntary

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petition under chapter 9 of the federal Bankruptcy Code or such  
corresponding chapter or sections as may be in effect, from time  
to time, and neither any public officer nor any organization,  
entity, or other person shall authorize the corporation to be or  
become a debtor under chapter 9 of the federal Bankruptcy Code  
or such corresponding chapter or sections as may be in effect,  
from time to time, during any such period.

(n)1. The following records of the corporation are  
confidential and exempt from the provisions of s. 119.07(1) and  
s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an  
applicant shall have access to his or her own underwriting  
files.

b. Claims files, until termination of all litigation and  
settlement of all claims arising out of the same incident,  
although portions of the claims files may remain exempt, as  
otherwise provided by law. Confidential and exempt claims file  
records may be released to other governmental agencies upon  
written request and demonstration of need; such records held by  
the receiving agency remain confidential and exempt as provided  
for herein.

c. Records obtained or generated by an internal auditor  
pursuant to a routine audit, until the audit is completed, or if  
the audit is conducted as part of an investigation, until the  
investigation is closed or ceases to be active. An investigation  
is considered "active" while the investigation is being  
conducted with a reasonable, good faith belief that it could  
lead to the filing of administrative, civil, or criminal  
proceedings.

d. Matters reasonably encompassed in privileged attorney-  
client communications.

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2516 e. Proprietary information licensed to the corporation  
2517 under contract and the contract provides for the confidentiality  
2518 of such proprietary information.

2519 f. All information relating to the medical condition or  
2520 medical status of a corporation employee which is not relevant  
2521 to the employee's capacity to perform his or her duties, except  
2522 as otherwise provided in this paragraph. Information which is  
2523 exempt shall include, but is not limited to, information  
2524 relating to workers' compensation, insurance benefits, and  
2525 retirement or disability benefits.

2526 g. Upon an employee's entrance into the employee  
2527 assistance program, a program to assist any employee who has a  
2528 behavioral or medical disorder, substance abuse problem, or  
2529 emotional difficulty which affects the employee's job  
2530 performance, all records relative to that participation shall be  
2531 confidential and exempt from the provisions of s. 119.07(1) and  
2532 s. 24(a), Art. I of the State Constitution, except as otherwise  
2533 provided in s. 112.0455(11).

2534 h. Information relating to negotiations for financing,  
2535 reinsurance, depopulation, or contractual services, until the  
2536 conclusion of the negotiations.

2537 i. Minutes of closed meetings regarding underwriting  
2538 files, and minutes of closed meetings regarding an open claims  
2539 file until termination of all litigation and settlement of all  
2540 claims with regard to that claim, except that information  
2541 otherwise confidential or exempt by law will be redacted.

2542  
2543 When an authorized insurer is considering underwriting a risk  
2544 insured by the corporation, relevant underwriting files and  
2545 confidential claims files may be released to the insurer  
2546 provided the insurer agrees in writing, notarized and under



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oath, to maintain the confidentiality of such files. When a file is transferred to an insurer that file is no longer a public record because it is not held by an agency subject to the provisions of the public records law. Underwriting files and confidential claims files may also be released to staff of and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to licensed general lines insurance agents: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving licensed general lines insurance agent must retain the confidentiality of the information received.

2. Portions of meetings of the corporation are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(b)-(d), the court reporter's

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notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

(o) It is the intent of the Legislature that the amendments to this subsection enacted in 2002 should, over time, reduce the probable maximum windstorm losses in the residual markets and should reduce the potential assessments to be levied on property insurers and policyholders statewide. In furtherance of this intent:

1. The board shall, on or before February 1 of each year, provide a report to the President of the Senate and the Speaker of the House of Representatives showing the reduction or increase in the 100-year probable maximum loss attributable to wind-only coverages and the quota share program under this subsection combined, as compared to the benchmark 100-year probable maximum loss of the Florida Windstorm Underwriting Association. For purposes of this paragraph, the benchmark 100-year probable maximum loss of the Florida Windstorm Underwriting Association shall be the calculation dated February 2001 and based on November 30, 2000, exposures. In order to ensure comparability of data, the board shall use the same methods for calculating its probable maximum loss as were used to calculate the benchmark probable maximum loss. The reduction or increase in probable maximum loss shall be calculated without taking into account the probable maximum loss attributable to the nonhomestead account.

2. Beginning February 1, 2013 ~~2007~~, if the report under subparagraph 1. for any year indicates that the 100-year probable maximum loss attributable to wind-only coverages and

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the quota share program combined does not reflect a reduction of at least 25 percent from the benchmark, the board shall reduce the boundaries of the high-risk area eligible for wind-only coverages under this subsection in a manner calculated to reduce such probable maximum loss to an amount at least 25 percent below the benchmark.

3. Beginning February 1, 2018 ~~2012~~, if the report under subparagraph 1. for any year indicates that the 100-year probable maximum loss attributable to wind-only coverages and the quota share program combined does not reflect a reduction of at least 50 percent from the benchmark, the boundaries of the high-risk area eligible for wind-only coverages under this subsection shall be reduced by the elimination of any area that is not seaward of a line 1,000 feet inland from the Intracoastal Waterway.

(p) In enacting the provisions of this section, the Legislature recognizes that both the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association have entered into financing arrangements that obligate each entity to service its debts and maintain the capacity to repay funds secured under these financing arrangements. It is the intent of the Legislature that nothing in this section be construed to compromise, diminish, or interfere with the rights of creditors under such financing arrangements. It is further the intent of the Legislature to preserve the obligations of the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting Association with regard to outstanding financing arrangements, with such obligations passing entirely and unchanged to the corporation and, specifically, to the applicable account of the corporation. So

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2640 long as any bonds, notes, indebtedness, or other financing  
2641 obligations of the Florida Windstorm Underwriting Association or  
2642 the Residential Property and Casualty Joint Underwriting  
2643 Association are outstanding, under the terms of the financing  
2644 documents pertaining to them, the governing board of the  
2645 corporation shall have and shall exercise the authority to levy,  
2646 charge, collect, and receive all premiums, assessments,  
2647 surcharges, charges, revenues, and receipts that the  
2648 associations had authority to levy, charge, collect, or receive  
2649 under the provisions of subsection (2) and this subsection,  
2650 respectively, as they existed on January 1, 2002, to provide  
2651 moneys, without exercise of the authority provided by this  
2652 subsection, in at least the amounts, and by the times, as would  
2653 be provided under those former provisions of subsection (2) or  
2654 this subsection, respectively, so that the value, amount, and  
2655 collectability of any assets, revenues, or revenue source  
2656 pledged or committed to, or any lien thereon securing such  
2657 outstanding bonds, notes, indebtedness, or other financing  
2658 obligations will not be diminished, impaired, or adversely  
2659 affected by the amendments made by this act and to permit  
2660 compliance with all provisions of financing documents pertaining  
2661 to such bonds, notes, indebtedness, or other financing  
2662 obligations, or the security or credit enhancement for them, and  
2663 any reference in this subsection to bonds, notes, indebtedness,  
2664 financing obligations, or similar obligations, of the  
2665 corporation shall include like instruments or contracts of the  
2666 Florida Windstorm Underwriting Association and the Residential  
2667 Property and Casualty Joint Underwriting Association to the  
2668 extent not inconsistent with the provisions of the financing  
2669 documents pertaining to them.

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(q) The corporation shall not require the securing of flood insurance as a condition of coverage if the insured or applicant executes a form approved by the office affirming that flood insurance is not provided by the corporation and that if flood insurance is not secured by the applicant or insured in addition to coverage by the corporation, the risk will not be covered for flood damage. A corporation policyholder electing not to secure flood insurance and executing a form as provided herein making a claim for water damage against the corporation shall have the burden of proving the damage was not caused by flooding. Notwithstanding other provisions of this subsection, the corporation may deny coverage to an applicant or insured who refuses to execute the form described herein.

(r) A salaried employee of the corporation who performs policy administration services subsequent to the effectuation of a corporation policy is not required to be licensed as an agent under the provisions of s. 626.112.

(s) The transition to homestead and nonhomestead accounts shall begin on October 1, 2006. A policy issued on or after that date shall be issued in the applicable homestead account or the nonhomestead account, based upon whether the property constitutes homestead property as provided in subparagraph (b)2. A policy in effect on October 1, 2006, shall be placed in the applicable homestead account or the nonhomestead account, based upon whether the property constitutes homestead property as provided in subparagraph (b)2., upon the first renewal of such policy after October 1, 2006.

(t) Any employee of the corporation whose position is managerial, policymaking, or professional in nature and all members of the corporation's board of governors shall comply

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with the Code of Ethics for public officers and employers found  
in ss. 112.311-112.326.

(u) An employee of the corporation shall notify the  
Division of Insurance Fraud within 48 hours after having  
information that would lead a reasonable person to suspect that  
fraud may have been committed by any employee of the  
corporation.

(v) By February 1, 2007, the corporation shall submit a  
report to the President of the Senate, the Speaker of the House  
of Representatives, the minority party leaders of the Senate and  
the House of Representatives, and the chairs of the standing  
committees of the Senate and the House of Representatives having  
jurisdiction over matters relating to property and casualty  
insurance. In preparing the report, the corporation shall  
consult with the Office of Insurance Regulation, the Department  
of Financial Services, and any other party the corporation  
determines is appropriate. The report shall include findings and  
recommendations on the feasibility of requiring authorized  
insurers that issue and service personal and commercial  
residential policies and commercial nonresidential policies that  
provide coverage for basic property perils except for the peril  
of wind to issue and service for a fee personal and commercial  
residential policies and commercial nonresidential policies  
providing coverage for the peril of wind issued by the  
corporation. The report shall include:

1. The expense savings to the corporation of issuing and  
servicing such policies as determined through a cost benefit  
analysis.

2. The expenses and liability to authorized insurers  
associated with issuing and servicing such policies.

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2730 3. The impact on service to policyholders of the  
2731 corporation relating to issuing and servicing such policies.

2732 4. The impact on the producing agent of the corporation of  
2733 issuing and servicing such policies.

2734 5. Recommendations as to the amount of the fee that should  
2735 be paid to authorized insurers for issuing and servicing such  
2736 policies.

2737 6. The impact issuing and servicing such policies will  
2738 have on the corporation's number of policies, total insured  
2739 value, and probable maximum loss.

2740 (w) There shall be no liability on the part of, and no  
2741 cause of action of any nature shall arise against, producing  
2742 agents of record or their employees for any action taken by them  
2743 in the performance of their duties or responsibilities relating  
2744 to the removal of policies from the corporation. Such immunity  
2745 only applies to actions that may arise due to differences in  
2746 coverage or procedures between any take-out insurer and the  
2747 corporation or for insolvency of any take-out insurer.

2748 (x) The Legislature finds that the total area eligible for  
2749 the high-risk account of the corporation has a material impact  
2750 on the availability of wind coverage from the voluntary admitted  
2751 market, deficits of the corporation, assessments to be levied on  
2752 property insurers and policyholders statewide, the ability and  
2753 willingness of authorized insurers to write wind coverage in the  
2754 high-risk areas, the probable maximum windstorm losses of the  
2755 corporation, general commerce in coastal areas, and the overall  
2756 financial condition of the state. Therefore, in furtherance of  
2757 these findings and intent:

2758 1. The High Risk Eligibility Panel is created.

2759 2. The members of the panel shall be appointed as follows:

2760 a. The board shall appoint two board members.

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b. The Governor shall appoint one member.

c. The Chief Financial Officer shall appoint one member.

d. The Commissioner of Insurance Regulation shall appoint  
a representative of the office to serve as a member.

e. The President of the Senate shall appoint one member.

f. The Speaker of the House of Representatives shall  
appoint one member.

Members of the panel must be residents of this state with  
insurance expertise. Members shall elect a chair and shall serve  
3-year terms each. The panel shall operate independently of any  
state agency and shall be administered by the corporation. The  
panel shall make an annual report to the President of the Senate  
and the Speaker of the House of Representatives on or before  
February 1 of each year recommending the areas that should be  
eligible for the high-risk account of the corporation. Members  
shall not receive compensation and are not entitled to receive  
reimbursement for per diem and travel expenses as provided in s.  
112.061, except for any panel member who is a state employee.

3. The Legislature's intent provided in subparagraphs  
(a)1. and 2. shall provide guidance for the panel to use in the  
panel's recommendations to the Legislature required in  
subparagraph 1. The panel shall consider the following factors  
in fulfilling its responsibilities under this paragraph:

a. The number of commercial risks in a given area that are  
unable to find wind coverage from the voluntary admitted market.

b. Reports from members of the mortgage industry  
indicating difficulty in finding forced placed policies for  
commercial wind coverage.

c. The number of approved excess and surplus lines  
carriers certifying an unwillingness to provide commercial wind



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coverage similar to that approved for use by the office for the voluntary admitted market.

d. Other relevant factors.

The office and the corporation shall provide the panel with any information the panel considers necessary to determine areas eligible for the high-risk account of the corporation. For the purpose of making accurate determinations for areas eligible for the high-risk account of the corporation, the panel may interview and request and receive information from residents of this state in areas impacted by this paragraph, including, but not limited to, insurance agents, insurance companies, actuaries, and other insurance professionals. Upon request of the panel, the office may conduct public hearings in areas that may be impacted by the panel's recommendations.

4. Notwithstanding other provisions of this paragraph, the panel shall conduct an analysis to determine the areas to be eligible for the high-risk account of the corporation for any county that contains an eligible area extending more than 2 miles from the coast, any coastal county that does not have areas designated as eligible for the high-risk account, and counties with barrier islands whether or not such islands or portions of such islands are currently eligible for the high risk account. The panel shall submit a report, including its analysis, to the office and to the corporation by November 30, 2006. The report shall specify changes to the areas eligible for the high-risk account for such affected counties based on its analysis.

Section 11. Paragraph (b) of subsection (3) of section 627.4035, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

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627.4035 Cash payment of premiums; claims.--

(3) All payments of claims made in this state under any contract of insurance shall be paid:

(b) If authorized in writing by the recipient or the recipient's representative, by debit card or any other form of electronic transfer. Any fees or costs to be charged against the recipient must be disclosed in writing to the recipient or the recipient's representative at the time of written authorization. However, the written authorization requirement may be waived by the recipient or the recipient's representative if the insurer verifies the identity of the insured or the insured's recipient and does not charge a fee for the transaction. If the funds are misdirected, the insurer would remain liable for the payment of the claim.

(4) Nothing in this section shall be construed as prohibiting an insurer from limiting its liability under a policy or endorsement providing that loss will be adjusted on the basis of replacement costs to the lesser of:

(a) The limit of liability shown on the policy declarations page;

(b) The reasonable and necessary cost to repair the damaged, destroyed, or stolen covered property; or

(c) The reasonable and necessary cost to replace the damaged, destroyed, or stolen covered property.

Section 12. Effective January 1, 2007, subsection (9) is added to section 627.701, Florida Statutes, to read:

627.701 Liability of insureds; coinsurance; deductibles.--

(9) With respect to hurricane coverage provided in a policy of residential coverage, when the policyholder has taken appropriate hurricane mitigation measures regarding the residence covered under the policy, the insurer shall provide

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the insured the option of selecting an appropriate reduction in the policy's hurricane deductible or selecting the appropriate discount credit or other rate differential as provided in s. 627.0629. The insurer must provide the policyholder with notice of the options available under this subsection on a form approved by the office.

Section 13. Subsections (2) and (3) of section 627.7011, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.--

(2) Unless the insurer obtains the policyholder's written refusal of the policies or endorsements specified in subsection (1), any policy covering the dwelling is deemed to include the law and ordinance coverage limited to 25 percent of the dwelling limit ~~specified in paragraph (1)(b)~~. The rejection or selection of alternative coverage shall be made on a form approved by the office. The form shall fully advise the applicant of the nature of the coverage being rejected. If this form is signed by a named insured, it will be conclusively presumed that there was an informed, knowing rejection of the coverage or election of the alternative coverage on behalf of all insureds. Unless the policyholder requests in writing the coverage specified in this section, it need not be provided in or supplemental to any other policy that renews, insures, extends, changes, supersedes, or replaces an existing policy when the policyholder has rejected the coverage specified in this section or has selected alternative coverage. The insurer must provide such policyholder with notice of the availability of such coverage in a form approved by the office at least once every 3 years. The failure

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2884 to provide such notice constitutes a violation of this code, but  
2885 does not affect the coverage provided under the policy.

2886 (3) In the event of a loss for which a dwelling ~~or~~  
2887 ~~personal property~~ is insured on the basis of replacement costs,  
2888 the insurer shall pay the replacement cost without reservation  
2889 or holdback of any depreciation in value, whether or not the  
2890 insured replaces or repairs the dwelling ~~or property~~.

2891 (6) Insurers shall issue separate checks for living  
2892 expenses, contents, and casualty proceeds. Checks for living  
2893 expenses and contents should be issued directly to the  
2894 policyholder.

2895 Section 14. Effective upon this act becoming a law,  
2896 section 627.7019, Florida Statutes, is created to read:

2897 627.7019 Standardization of requirements applicable to  
2898 insurers after natural disasters.--

2899 (1) The commission shall adopt by rule, pursuant to s.  
2900 120.54(1)-(3), standardized requirements that may be applied to  
2901 insurers as a consequence of a hurricane or other natural  
2902 disaster. The rules shall address the following areas:

2903 (a) Claims reporting requirements.

2904 (b) Grace periods for payment of premiums and performance  
2905 of other duties by insureds.

2906 (c) Temporary postponement of cancellations and  
2907 nonrenewals.

2908 (2) The rules adopted pursuant to this section shall  
2909 require the office to issue an order within 72 hours after the  
2910 occurrence of a hurricane or other natural disaster specifying,  
2911 by line of insurance, which of the standardized requirements  
2912 apply, the geographic areas in which they apply, the time at  
2913 which applicability commences, and the time at which  
2914 applicability terminates.

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2915       (3) The commission and the office may not adopt an  
2916 emergency rule under s. 120.54(4) in conflict with any provision  
2917 of the rules adopted under this section.

2918       (4) The commission shall initiate rulemaking under this  
2919 section no later than June 1, 2006.

2920       Section 15. Subsection (5) of section 627.727, Florida  
2921 Statutes, is amended to read:

2922       627.727 Motor vehicle insurance; uninsured and  
2923 underinsured vehicle coverage; insolvent insurer protection.--

2924       (5) Any person having a claim against an insolvent insurer  
2925 as defined in s. 631.54~~(6)~~~~(5)~~ under the provisions of this  
2926 section shall present such claim for payment to the Florida  
2927 Insurance Guaranty Association only. In the event of a payment  
2928 to any person in settlement of a claim arising under the  
2929 provisions of this section, the association is not subrogated or  
2930 entitled to any recovery against the claimant's insurer. The  
2931 association, however, has the rights of recovery as set forth in  
2932 chapter 631 in the proceeds recoverable from the assets of the  
2933 insolvent insurer.

2934       Section 16. Paragraph (f) is added to subsection (2) of  
2935 section 631.181, Florida Statutes, to read:

2936       631.181 Filing and proof of claim.--

2937       (2)

2938       (f) The signed statement required by this section shall  
2939 not be required on claims for which adequate claims file  
2940 documentation exists within the records of the insolvent  
2941 insurer. Claims for payment of unearned premium shall not be  
2942 required to use the signed statement required by this section if  
2943 the receiver certifies to the guaranty fund that the records of  
2944 the insolvent insurer are sufficient to determine the amount of  
2945 unearned premium owed to each policyholder of the insurer and

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2946 such information is remitted to the guaranty fund by the  
2947 receiver in electronic or other mutually agreed-upon format.

2948 Section 17. Subsections (5), (6), (7), and (8) of section  
2949 631.54, Florida Statutes, are renumbered as subsections (6),  
2950 (7), (8), and (9), respectively, and a new subsection (5) is  
2951 added to that section, to read:

2952 631.54 Definitions.--As used in this part:

2953 (5) "Homeowner's insurance" means personal lines  
2954 residential property insurance coverage that consists of the  
2955 type of coverage provided under homeowner's, dwelling, and  
2956 similar policies for repair or replacement of the insured  
2957 structure and contents, which policies are written directly to  
2958 the individual homeowner. Residential coverage for personal  
2959 lines as set forth in this section includes policies that  
2960 provide coverage for particular perils such as windstorm and  
2961 hurricane coverage but excludes all coverage for mobile homes,  
2962 renter's insurance, or tenant's coverage. The term "homeowner's  
2963 insurance" excludes commercial residential policies covering  
2964 condominium associations or homeowners' associations, which  
2965 associations have a responsibility to provide insurance coverage  
2966 on residential units within the association, and also excludes  
2967 coverage for the common elements of a homeowners' association.

2968 Section 18. Subsection (1) of section 631.55, Florida  
2969 Statutes, is amended to read:

2970 631.55 Creation of the association.--

2971 (1) There is created a nonprofit corporation to be known  
2972 as the "Florida Insurance Guaranty Association, Incorporated."  
2973 All insurers defined as member insurers in s. 631.54~~(7)~~(6) shall  
2974 be members of the association as a condition of their authority  
2975 to transact insurance in this state, and, further, as a  
2976 condition of such authority, an insurer shall agree to reimburse

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the association for all claim payments the association makes on said insurer's behalf if such insurer is subsequently rehabilitated. The association shall perform its functions under a plan of operation established and approved under s. 631.58 and shall exercise its powers through a board of directors established under s. 631.56. The corporation shall have all those powers granted or permitted nonprofit corporations, as provided in chapter 617.

Section 19. Paragraph (a) of subsection (1), paragraph (d) of subsection (2), and paragraph (a) of subsection (3) of section 631.57, Florida Statutes, are amended, and paragraph (e) is added to subsection (3) of that section, to read:

631.57 Powers and duties of the association.--

(1) The association shall:

(a)1. Be obligated to the extent of the covered claims existing:

a. Prior to adjudication of insolvency and arising within 30 days after the determination of insolvency;

b. Before the policy expiration date if less than 30 days after the determination; or

c. Before the insured replaces the policy or causes its cancellation, if she or he does so within 30 days of the determination.

2. The obligation under subparagraph 1. shall include only the amount of each covered claim that is in excess of \$100 and is less than \$300,000, except policies providing coverage for homeowner's insurance shall provide for an additional \$200,000 for the portion of a covered claim that relates only to the damage to the structure and contents.

3.a.2. Notwithstanding subparagraph 2., the obligation under subparagraph 1. ~~for shall include only that amount of each~~

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~~covered claim which is in excess of \$100 and is less than~~  
~~\$300,000, except with respect to policies covering condominium~~  
associations or homeowners' associations, which associations  
have a responsibility to provide insurance coverage on  
residential units within the association, ~~the obligation shall~~  
include that amount of each covered property insurance claim  
which is less than \$100,000 multiplied by the number of  
condominium units or other residential units; however, as to  
homeowners' associations, this sub-subparagraph ~~subparagraph~~  
applies only to claims for damage or loss to residential units  
and structures attached to residential units.

b. Notwithstanding sub-subparagraph a., the association  
has no obligation to pay covered claims that are to be paid from  
the proceeds of bonds issued under s. 631.695. However, the  
association shall assign and pledge the first available moneys  
from all or part of the assessments to be made under paragraph  
(3)(a) to or on behalf of the issuer of such bonds for the  
benefit of the holders of such bonds. The association shall  
administer any such covered claims and present valid covered  
claims for payment in accordance with the provisions of the  
assistance program in connection with which such bonds have been  
issued.

3. In no event shall the association be obligated to a  
policyholder or claimant in an amount in excess of the  
obligation of the insolvent insurer under the policy from which  
the claim arises.

(2) The association may:

(d) Negotiate and become a party to such contracts as are  
necessary to carry out the purpose of this part. Additionally,  
the association may enter into such contracts with a  
municipality, a county, or a legal entity created pursuant to s.



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3039 163.01(7)(g) as are necessary in order for the municipality,  
3040 county, or legal entity to issue bonds under s. 631.695. In  
3041 connection with the issuance of any such bonds and the entering  
3042 into of any such necessary contracts, the association may agree  
3043 to such terms and conditions as the association deems necessary  
3044 and proper.

3045 (3)(a) To the extent necessary to secure the funds for the  
3046 respective accounts for the payment of covered claims, ~~and also~~  
3047 to pay the reasonable costs to administer the same, and to the  
3048 extent necessary to secure the funds for the account specified  
3049 in s. 631.55(2)(c) or to retire indebtedness, including, without  
3050 limitation, the principal, redemption premium, if any, and  
3051 interest on, and related costs of issuance of, bonds issued  
3052 under s. 631.695 and the funding of any reserves and other  
3053 payments required under the bond resolution or trust indenture  
3054 pursuant to which such bonds have been issued, the office, upon  
3055 certification of the board of directors, shall levy assessments  
3056 in the proportion that each insurer's net direct written  
3057 premiums in this state in the classes protected by the account  
3058 bears to the total of said net direct written premiums received  
3059 in this state by all such insurers for the preceding calendar  
3060 year for the kinds of insurance included within such account.  
3061 Assessments shall be remitted to and administered by the board  
3062 of directors in the manner specified by the approved plan. Each  
3063 insurer so assessed shall have at least 30 days' written notice  
3064 as to the date the assessment is due and payable. Every  
3065 assessment shall be made as a uniform percentage applicable to  
3066 the net direct written premiums of each insurer in the kinds of  
3067 insurance included within the account in which the assessment is  
3068 made. The assessments levied against any insurer shall not  
3069 exceed in any one year more than 2 percent of that insurer's net

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direct written premiums in this state for the kinds of insurance included within such account during the calendar year next preceding the date of such assessments.

(e)1.a. In addition to assessments otherwise authorized in paragraph (a) and to the extent necessary to secure the funds for the account specified in s. 631.55(2)(c) or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy emergency assessments upon insurers holding a certificate of authority. The emergency assessments payable under this paragraph by any insurer shall not exceed in any single year more than 2 percent of that insurer's direct written premiums, net of refunds, in this state during the preceding calendar year for the kinds of insurance within the account specified in s. 631.55(2)(c).

b. Any emergency assessments authorized under this paragraph shall be levied by the office upon insurers referred to in sub-subparagraph a., upon certification as to the need for such assessments by the board of directors, in each year that bonds issued under s. 631.695 and secured by such emergency assessments are outstanding, in such amounts up to such 2-percent limit as required in order to provide for the full and timely payment of the principal of, redemption premium, if any, and interest on, and related costs of issuance of, such bonds. The emergency assessments provided for in this paragraph are assigned and pledged to the municipality, county, or legal entity issuing bonds under s. 631.695 for the benefit of the

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holders of such bonds, in order to enable such municipality, county, or legal entity to provide for the payment of the principal of, redemption premium, if any, and interest on such bonds, the cost of issuance of such bonds, and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, without the necessity of any further action by the association, the office, or any other party. To the extent bonds are issued under s. 631.695 and the association determines to secure such bonds by a pledge of revenues received from the emergency assessments, such bonds, upon such pledge of revenues, shall be secured by and payable from the proceeds of such emergency assessments, and the proceeds of emergency assessments levied under this paragraph shall be remitted directly to and administered by the trustee or custodian appointed for such bonds.

c. Emergency assessments under this paragraph may be payable in a single payment or, at the option of the association, may be payable in 12 monthly installments with the first installment being due and payable at the end of the month after an emergency assessment is levied and subsequent installments being due not later than the end of each succeeding month.

d. If emergency assessments are imposed, the report required by s. 631.695(7) shall include an analysis of the revenues generated from the emergency assessments imposed under this paragraph.

e. If emergency assessments are imposed, the references in sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to assessments levied under paragraph (a) shall include emergency assessments imposed under this paragraph.

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2. In order to ensure that insurers paying emergency assessments levied under this paragraph continue to charge rates that are neither inadequate nor excessive, within 90 days after being notified of such assessments, each insurer that is to be assessed pursuant to this paragraph shall submit a rate filing for coverage included within the account specified in s. 631.55(2)(c) and for which rates are required to be filed under s. 627.062. If the filing reflects a rate change that, as a percentage, is equal to the difference between the rate of such assessment and the rate of the previous year's assessment under this paragraph, the filing shall consist of a certification so stating and shall be deemed approved when made. Any rate change of a different percentage shall be subject to the standards and procedures of s. 627.062.

3. An annual assessment under this paragraph shall continue while the bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund bonds issued pursuant to s. 631.695, unless adequate provision has been made for the payment of the bonds in the documents authorizing the issuance of such bonds.

4. Emergency assessments under this paragraph are not premium and are not subject to the premium tax, to any fees, or to any commissions. An insurer is liable for all emergency assessments that the insurer collects and shall treat the failure of an insured to pay an emergency assessment as a failure to pay the premium. An insurer is not liable for uncollectible emergency assessments.

Section 20. Section 631.695, Florida Statutes, is created to read:

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3162 631.695 Revenue bond issuance through counties or  
3163 municipalities.--

3164 (1) The Legislature finds:

3165 (a) The potential for widespread and massive damage to  
3166 persons and property caused by hurricanes making landfall in  
3167 this state can generate insurance claims of such a number as to  
3168 render numerous insurers operating within this state insolvent  
3169 and therefore unable to satisfy covered claims.

3170 (b) The inability of insureds within this state to receive  
3171 payment of covered claims or to timely receive such payment  
3172 creates financial and other hardships for such insureds and  
3173 places undue burdens on the state, the affected units of local  
3174 government, and the community at large.

3175 (c) In addition, the failure of insurers to pay covered  
3176 claims or to timely pay such claims due to the insolvency of  
3177 such insurers can undermine the public's confidence in insurers  
3178 operating within this state, thereby adversely affecting the  
3179 stability of the insurance industry in this state.

3180 (d) The state has previously taken action to address these  
3181 problems by adopting the Florida Insurance Guaranty Association  
3182 Act, which, among other things, provides a mechanism for the  
3183 payment of covered claims under certain insurance policies to  
3184 avoid excessive delay in payment and to avoid financial loss to  
3185 claimants or policyholders because of the insolvency of an  
3186 insurer.

3187 (e) In the wake of the unprecedented destruction caused by  
3188 various hurricanes that have made landfall in this state, the  
3189 resultant covered claims, and the number of insurers rendered  
3190 insolvent thereby, make it evident that alternative programs  
3191 must be developed to allow the Florida Insurance Guaranty

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3192 Association to more expeditiously and effectively provide for  
3193 the payment of covered claims.

3194 (f) It is therefore determined to be in the best interests  
3195 of, and necessary for, the protection of the public health,  
3196 safety, and general welfare of the residents of this state and  
3197 for the protection and preservation of the economic stability of  
3198 insurers operating in this state and it is declared to be an  
3199 essential public purpose to permit certain municipalities and  
3200 counties to take such actions as will provide relief to  
3201 claimants and policyholders having covered claims against  
3202 insolvent insurers operating in this state by expediting the  
3203 handling and payment of covered claims.

3204 (g) To achieve the foregoing purposes, it is proper to  
3205 authorize municipalities and counties of this state  
3206 substantially affected by the landfall of a hurricane to issue  
3207 bonds to assist the Florida Insurance Guaranty Association in  
3208 expediting the handling and payment of covered claims of  
3209 insolvent insurers.

3210 (h) In order to avoid the needless and indiscriminate  
3211 proliferation, duplication, and fragmentation of such assistance  
3212 programs, it is in the best interests of the residents of this  
3213 state to authorize municipalities and counties severely affected  
3214 by a hurricane to provide for the payment of covered claims  
3215 beyond their territorial limits in the implementation of such  
3216 programs.

3217 (i) It is a paramount public purpose for municipalities  
3218 and counties substantially affected by the landfall of a  
3219 hurricane to be able to issue bonds for the purposes described  
3220 in this section. Such issuance shall provide assistance to  
3221 residents of those municipalities and counties as well as to  
3222 other residents of this state.

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3223       (2) The governing body of any municipality or county, the  
3224 residents of which have been substantially affected by a  
3225 hurricane, may issue bonds to fund an assistance program in  
3226 conjunction with, and with the consent of, the Florida Insurance  
3227 Guaranty Association for the purpose of paying claimants' or  
3228 policyholders' covered claims, as defined in s. 631.54, arising  
3229 through the insolvency of an insurer, which insolvency is  
3230 determined by the Florida Insurance Guaranty Association to have  
3231 been a result of a hurricane, regardless of whether the  
3232 claimants or policyholders are residents of such municipality or  
3233 county or the property to which the claim relates is located  
3234 within or outside the territorial jurisdiction of the  
3235 municipality or county. The power of a municipality or county to  
3236 issue bonds, as described in this section, is in addition to any  
3237 powers granted by law and may not be abrogated or restricted by  
3238 any provisions in such municipality's or county's charter. A  
3239 municipality or county issuing bonds for this purpose shall  
3240 enter into such contracts with the Florida Insurance Guaranty  
3241 Association or any entity acting on behalf of the Florida  
3242 Insurance Guaranty Association as are necessary to implement the  
3243 assistance program. Any bonds issued by a municipality or county  
3244 or a combination thereof under this subsection shall be payable  
3245 from and secured by moneys received by or on behalf of the  
3246 municipality or county from assessments levied under s.  
3247 631.57(3)(a) and assigned and pledged to or on behalf of the  
3248 municipality or county for the benefit of the holders of the  
3249 bonds in connection with the assistance program. The funds,  
3250 credit, property, and taxing power of the state or any  
3251 municipality or county shall not be pledged for the payment of  
3252 such bonds.

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3253       (3) Bonds may be validated by the municipality or county  
3254 pursuant to chapter 75. The proceeds of the bonds may be used to  
3255 pay covered claims of insolvent insurers; to refinance or  
3256 replace previously existing borrowings or financial  
3257 arrangements; to pay interest on bonds; to fund reserves for the  
3258 bonds; to pay expenses incident to the issuance or sale of any  
3259 bond issued under this section, including costs of validating,  
3260 printing, and delivering the bonds, costs of printing the  
3261 official statement, costs of publishing notices of sale of the  
3262 bonds, costs of obtaining credit enhancement or liquidity  
3263 support, and related administrative expenses; or for such other  
3264 purposes related to the financial obligations of the fund as the  
3265 association may determine. The term of the bonds may not exceed  
3266 30 years.

3267       (4) The state covenants with holders of bonds of the  
3268 assistance program that the state will not take any action that  
3269 will have a material adverse effect on the holders and will not  
3270 repeal or abrogate the power of the board of directors of the  
3271 association to direct the Office of Insurance Regulation to levy  
3272 the assessments and to collect the proceeds of the revenues  
3273 pledged to the payment of the bonds as long as any of the bonds  
3274 remain outstanding, unless adequate provision has been made for  
3275 the payment of the bonds in the documents authorizing the  
3276 issuance of the bonds.

3277       (5) The accomplishment of the authorized purposes of such  
3278 municipality or county under this section is in all respects for  
3279 the benefit of the people of the state, for the increase of  
3280 their commerce and prosperity, and for the improvement of their  
3281 health and living conditions. The municipality or county, in  
3282 performing essential governmental functions in accomplishing its  
3283 purposes, is not required to pay any taxes or assessments of any



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3284 kind whatsoever upon any property acquired or used by the county  
3285 or municipality for such purposes or upon any revenues at any  
3286 time received by the county or municipality. The bonds, notes,  
3287 and other obligations of the municipality or county and the  
3288 transfer of and income from such bonds, notes, and other  
3289 obligations, including any profits made on the sale of such  
3290 bonds, notes, and other obligations, are exempt from taxation of  
3291 any kind by the state or by any political subdivision or other  
3292 agency or instrumentality of the state. The exemption granted in  
3293 this subsection is not applicable to any tax imposed by chapter  
3294 220 on interest, income, or profits on debt obligations owned by  
3295 corporations.

3296 (6) Two or more municipalities or counties, the residents  
3297 of which have been substantially affected by a hurricane, may  
3298 create a legal entity pursuant to s. 163.01(7)(g) to exercise  
3299 the powers described in this section as well as those powers  
3300 granted in s. 163.01(7)(g). References in this section to a  
3301 municipality or county includes such legal entity.

3302 (7) The association shall issue an annual report on the  
3303 status of the use of bond proceeds as related to insolvencies  
3304 caused by hurricanes. The report must contain the number and  
3305 amount of claims paid. The association shall also include an  
3306 analysis of the revenue generated from the assessment levied  
3307 under s. 631.57(3)(a) to pay such bonds. The association shall  
3308 submit a copy of the report to the President of the Senate, the  
3309 Speaker of the House of Representatives, and the Chief Financial  
3310 Officer within 90 days after the end of each calendar year in  
3311 which bonds were outstanding.

3312 Section 21. No provision of s. 631.57 or s. 631.695,  
3313 Florida Statutes, shall be repealed until such time as the  
3314 principal, redemption premium, if any, and interest on all bonds

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3315 issued under s. 631.695, Florida Statutes, payable and secured  
3316 from assessments levied under s. 631.57(3)(a), Florida Statutes,  
3317 have been paid in full or adequate provision for such payment  
3318 has been made in accordance with the bond resolution or trust  
3319 indenture pursuant to which the bonds were issued.

3320 Section 22. Paragraph (a) of subsection (1) of section  
3321 817.234, Florida Statutes, is amended to read:

3322 817.234 False and fraudulent insurance claims.--

3323 (1)(a) A person commits insurance fraud punishable as  
3324 provided in subsection (11) if that person, with the intent to  
3325 injure, defraud, or deceive any insurer:

3326 1. Presents or causes to be presented any written or oral  
3327 statement as part of, or in support of, a claim for payment or  
3328 other benefit pursuant to an insurance policy or a health  
3329 maintenance organization subscriber or provider contract,  
3330 knowing that such statement contains any false, incomplete, or  
3331 misleading information concerning any fact or thing material to  
3332 such claim;

3333 2. Prepares or makes any written or oral statement that is  
3334 intended to be presented to any insurer in connection with, or  
3335 in support of, any claim for payment or other benefit pursuant  
3336 to an insurance policy or a health maintenance organization  
3337 subscriber or provider contract, knowing that such statement  
3338 contains any false, incomplete, or misleading information  
3339 concerning any fact or thing material to such claim; or

3340 3.a. Knowingly presents, causes to be presented, or  
3341 prepares or makes with knowledge or belief that it will be  
3342 presented to any insurer, purported insurer, servicing  
3343 corporation, insurance broker, or insurance agent, or any  
3344 employee or agent thereof, any false, incomplete, or misleading  
3345 information or written or oral statement as part of, or in

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support of, an application for the issuance of, or the rating of, any insurance policy, or a health maintenance organization subscriber or provider contract, including any false declaration of homestead status for the purpose of obtaining coverage in a homestead account under s. 627.351(6); or

b. Who knowingly conceals information concerning any fact material to such application.

Section 23. Task Force on Hurricane Mitigation and Hurricane Insurance for Mobile and Manufactured Homes.--

(1) TASK FORCE CREATED.--There is created the Task Force on Hurricane Mitigation and Hurricane Insurance for Mobile and Manufactured Homes.

(2) ADMINISTRATION.--The task force shall be administratively housed within the Office of Insurance Regulation but shall operate independently of any state officer or agency. The office shall provide such administrative support as the task force deems necessary to accomplish its mission and shall provide necessary funding for the task force within the office's existing resources. The Executive Office of the Governor, the Department of Financial Services, the Office of Insurance Regulation, the Department of Highway Safety and Motor Vehicles, and the Department of Community Affairs shall provide substantive staff support for the task force.

(3) MEMBERSHIP.--The members of the task force shall be appointed as follows:

(a) The Governor shall appoint two members who have expertise in financial matters, one of whom is a representative of the mobile or manufactured home industry and one of whom is a representative of insurance consumers.

(b) The Chief Financial Officer shall appoint two members who have expertise in financial matters, one of whom is a

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representative of a property insurer writing mobile or  
manufactured homeowners insurance in this state and one of whom  
is a representative of insurance agents.

(c) The President of the Senate shall appoint one member.

(d) The Speaker of the House of Representatives shall  
appoint one member.

(e) The Commissioner of Insurance Regulation or his or her  
designee shall serve as an ex officio voting member of the task  
force.

(f) The Executive Director of Citizens Property Insurance  
or his or her designee shall serve as an ex officio voting  
member of the task force.

(g) The Chief Executive Officer of the Federal Alliance  
for Safe Homes, Incorporated or his or her designee shall serve  
as an ex officio voting member of the task force.

Members of the task force shall serve without compensation but  
may receive reimbursement for per diem and travel expenses as  
provided in s. 112.061, Florida Statutes.

(4) PURPOSE AND INTENT.--The Legislature recognizes the  
continued availability of hurricane insurance coverage for  
mobile and manufactured home owners in this state is essential  
to the state's economic survival. The Legislature further  
recognizes hurricane mitigation measures and building codes may  
reduce the likelihood or amount of damage to mobile or  
manufactured homes in the event of a hurricane. The Legislature  
further recognizes mobile and manufactured homes provide safe  
and affordable housing to many residents of this state. The  
purpose of the task force is to make recommendations to the  
legislative and executive branches of this state's government  
relating to the creation and maintenance of insurance capacity

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3408 in the private sector and public sector that is sufficient to  
3409 ensure that all mobile and manufactured home owners in this  
3410 state are able to obtain appropriate insurance coverage for  
3411 hurricane losses and relating to the effectiveness of hurricane  
3412 mitigation measures for mobile or manufactured homes as further  
3413 described in this section.

3414 (5) SPECIFIC TASKS.--The task force shall conduct such  
3415 research and hearings as the task force deems necessary to  
3416 achieve the purposes specified in subsection (4) and shall  
3417 develop information on relevant issues, including, but not  
3418 limited to, the following issues:

3419 (a) Whether this state currently has sufficient hurricane  
3420 insurance capacity for mobile and manufactured homes to ensure  
3421 the continuation of a healthy, competitive marketplace, taking  
3422 into consideration private-sector and public-sector resources.

3423 (b) Identifying the future demands on the hurricane  
3424 insurance capacity of this state, taking into account population  
3425 growth, coastal growth, and anticipated future hurricane  
3426 activity.

3427 (c) Identifying how many mobile or manufactured homes are  
3428 occupied in this state, how many mobile or manufactured homes  
3429 are occupied by owners who also own the land to which the unit  
3430 is attached, the age or average age of mobile or manufactured  
3431 homes, the location of such homes, and the size of such homes.

3432 (d) The extent to which the growth in insurance on mobile  
3433 or manufactured homes in Citizens Property Insurance Corporation  
3434 is attributable to insufficient insurance capacity.

3435 (e) The extent to which the growth trends of Citizens  
3436 Property Insurance Corporation create long-term problems for  
3437 mobile and manufactured home owners in this state and for other  
3438 persons and businesses that depend on a viable market.

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(f) The extent to which insurance discounts, credits, or other rate differentials or reductions in the hurricane insurance deductible for a mobile or manufactured homeowner who takes mitigative measures would increase hurricane insurance capacity for mobile or manufactured homeowners.

(g) The extent hurricane mitigation enhancements to mobile or manufactured homes decreases the likelihood of damage from a hurricane or decreases the amount of damage from a hurricane.

(h) The extent to which the building codes reduce the likelihood of damage or amount of damage to mobile or manufactured homes.

(6) REPORT AND RECOMMENDATIONS.--By January 1, 2007, the task force shall provide a report containing findings relating to the tasks identified in subsection (5) and recommendations consistent with the purposes of this section and also consistent with such findings. The task force shall submit the report to the Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives. The task force may also submit such interim reports as the task force deems appropriate.

(7) EXPIRATION.--The task force shall expire on January 2, 2007.

Section 24. By January 1, 2007, the Office of Insurance Regulation shall submit a report to the President of the Senate, the Speaker of the House of Representatives, the minority party leaders of the Senate and the House of Representatives, and the chairs of the standing committees of the Senate and the House of Representatives having jurisdiction over matters relating to property and casualty insurance. In preparing the report, the office shall consult with the Department of Highway Safety and Motor Vehicles, the Department of Community Affairs, the Florida

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3470 Building Commission, the Florida Home Builders Association,  
3471 representatives of the mobile and manufactured home industry,  
3472 representatives of the property and casualty insurance industry,  
3473 and any other party the office determines is appropriate. The  
3474 report shall include findings and recommendations on the  
3475 insurability of attached or free standing structures to  
3476 residential homes, mobile, or manufactured homes, such as  
3477 carports or pool enclosures; the increase or decrease in  
3478 insurance costs associated with insuring such structures; the  
3479 feasibility of insuring such structures; the impact on  
3480 homeowners of not having insurance coverage for such structures;  
3481 the ability of mitigation measures relating to such structures  
3482 to reduce risk and loss; and such other related information as  
3483 the office determines is appropriate for the Legislature to  
3484 consider.

3485       Section 25. The Office of Insurance Regulation, in  
3486 consultation with the Department of Community Affairs, the  
3487 Department of Financial Services, the Federal Alliance for Safe  
3488 Homes, the Florida Insurance Council, the Florida Home Builders  
3489 Association, the Florida Manufactured Housing Association, the  
3490 Risk and Insurance Department of Florida State University, and  
3491 the Institute for Business and Homes Safety, shall study and  
3492 develop a program that will provide an objective rating system  
3493 that will allow homeowner's to evaluate the relative ability of  
3494 Florida properties to withstand the wind load from a sustained  
3495 severe tropical storm or hurricane.

3496       The rating system will be designed in a manner that is easy  
3497 to understand for the property owner, based on proven readily  
3498 verifiable mitigation techniques and devices, and able to be  
3499 implemented based on a visual inspection program. The Department

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

3500 of Financial Services shall implement a pilot program for use in  
3501 the Florida Comprehensive Hurricane Damage Mitigation Program.

3502 The Department shall provide a report to the Governor, the  
3503 President of the Senate, and the Speaker of the House by March  
3504 31, 2007, detailing the nature and construction of the rating  
3505 scale, its effectiveness based on implementation in a pilot  
3506 program and an operational plan for statewide implementation of  
3507 the rating scale.

3508 Section 26. (1) For fiscal year 2006-2007, the sum of  
3509 \$100 million is appropriated from the General Revenue Fund to  
3510 the Department of Financial Services for the Florida Hurricane  
3511 Damage Prevention Endowment as a nonrecurring appropriation for  
3512 the purposes specified in s. 215.558, Florida Statutes.

3513 (2) The sum of \$400 million is appropriated from the  
3514 General Revenue Fund to the Department of Financial Services as  
3515 a nonrecurring appropriation for the purposes specified in s.  
3516 215.5586, Florida Statutes.

3517 (3) Funds provided in subsections (1) and (2) shall be  
3518 transferred by the department to the Florida Hurricane Damage  
3519 Prevention Trust Fund, as created in s. 215.5585, Florida  
3520 Statutes.

3521 (4) For fiscal year 2006-2007, the recurring sum of \$5  
3522 million is appropriated to the Department of Financial Services  
3523 from the Florida Hurricane Damage Prevention Trust Fund, Special  
3524 Category - Financial Incentives for Hurricane Damage Prevention.

3525 (5) For fiscal year 2006-2007, the nonrecurring sum of  
3526 \$400 million is appropriated to the Department of Financial  
3527 Services from the Florida Hurricane Damage Prevention Trust  
3528 Fund, Special Category - Florida Comprehensive Hurricane Damage  
3529 Mitigation Program. The department may spend up to 1 percent of  
3530 the funds appropriated to administer the program.



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

3531 Notwithstanding s. 216.301, Florida Statutes, and pursuant to s.  
3532 216.351, Florida Statutes, any unexpended balance from this  
3533 appropriation shall be carried forward at the end of each fiscal  
3534 year until the 2010-2011 fiscal year. At the end of the 2010-  
3535 2011 fiscal year, any obligated funds for qualified projects  
3536 that are not yet disbursed shall remain with the department to  
3537 be used for the purposes of this act. Any unobligated funds of  
3538 this appropriation shall revert to the Florida Hurricane Damage  
3539 Prevention Trust Fund at the end of the 2010-2011 fiscal year.

3540       Section 27. (1) For fiscal year 2006-2007, the sum of  
3541 \$920 million in nonrecurring funds is appropriated from the  
3542 General Revenue Fund to the Department of Financial Services for  
3543 transfer to the Citizens Property Insurance Corporation to avoid  
3544 regular assessments on assessable insurers, as authorized under  
3545 s. 627.351(6)(b)3.b., Florida Statutes, for the 2005 Plan Year  
3546 deficit. The board of governors of the corporation shall use  
3547 appropriated state moneys to fund that portion of the 2005 Plan  
3548 Year deficit which would result in the levying of regular  
3549 assessments in the commercial lines, personal lines, and high-  
3550 risk accounts. The transfer made by the department to the  
3551 corporation shall be limited to the amount of the total regular  
3552 assessments that were authorized by law to cover the 2005 Plan  
3553 Year deficit. Any unused and remaining funds in this  
3554 appropriation shall revert to the General Revenue Fund.

3555       (2) The corporation shall amortize over a 10-year period  
3556 any emergency assessments resulting from the 2005 Plan Year  
3557 deficit.

3558       Section 28. For fiscal year 2006-2007, the sums of  
3559 \$250,000 in recurring funds and \$425,000 in nonrecurring funds  
3560 are appropriated from the Insurance Regulatory Trust Fund in the  
3561 Department of Financial Services to the Office of Insurance

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

3562 Regulation for the purpose of carrying out reporting and  
3563 administrative responsibilities of this act.

3564 Section 29. Except as otherwise expressly provided in this  
3565 act, this act shall take effect July 1, 2006.

3566  
3567 ===== T I T L E A M E N D M E N T =====

3568 Remove the entire title and insert:

3569 A bill to be entitled  
3570 An act relating to property and casualty insurance;  
3571 amending s. 215.555, F.S.; revising a definition; revising  
3572 certain reimbursement contract criteria; providing  
3573 retention levels for limited apportionment companies;  
3574 revising certain reimbursement premium requirements;  
3575 revising certain revenue bond emergency assessment  
3576 requirements; creating s. 215.558, F.S.; creating the  
3577 Florida Hurricane Damage Prevention Endowment; providing a  
3578 purpose and legislative intent; providing definitions;  
3579 providing requirements and authority for investment of  
3580 endowment assets by the State Board of Administration;  
3581 requiring a report to the Legislature; providing for  
3582 payment of the board's investment services' costs and fees  
3583 from the endowment; providing requirements of the  
3584 Department of Financial Services in providing financial  
3585 incentives for residential hurricane damage prevention  
3586 activities; providing for an interest-free loan program;  
3587 providing program criteria and requirements; creating s.  
3588 215.5586, F.S.; establishing the Florida Comprehensive  
3589 Hurricane Damage Mitigation Program within the Department  
3590 of Financial Services; providing qualifications for the  
3591 program administrator; providing program components;  
3592 creating an advisory council for certain purposes;

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

3593 providing for appointment of members; requiring members to  
3594 serve without compensation; providing for per diem and  
3595 travel expenses; requiring the department to adopt rules;  
3596 amending s. 215.559, F.S.; deleting a requirement for the  
3597 Department of Community Affairs to establish a low-  
3598 interest loan program for homeowners; amending s. 626.918,  
3599 F.S.; authorizing certain letters of credit to fund an  
3600 insurer's required policyholder protection trust fund;  
3601 providing a definition; amending s. 627.062, F.S.;  
3602 specifying certain rate filings as not subject to office  
3603 determination as excessive or unfairly discriminatory;  
3604 providing limitations; providing a definition; prohibiting  
3605 certain rate filings under certain circumstances;  
3606 preserving the office's authority to disapprove certain  
3607 rate filings under certain circumstances; providing  
3608 procedures for insurers submitting certain rate filings;  
3609 specifying nonapplication to certain types of insurance;  
3610 specifying approval of certain rate filings under certain  
3611 circumstances; providing an exception; requiring the  
3612 office to provide annual reports on the impact of certain  
3613 rate regulations; specifying report requirements; amending  
3614 s. 627.0628, F.S.; prohibiting certain office or consumer  
3615 advocate questions of certain models reviewed by the  
3616 commission; amending s. 627.06281, F.S.; prohibiting the  
3617 office from using certain hurricane loss projection models  
3618 under certain circumstances; amending s. 627.0645, F.S.;  
3619 requiring the office to exempt insurers from a rate filing  
3620 under specified circumstances; amending s. 627.351, F.S.,  
3621 relating to the Citizens Property Insurance Corporation;  
3622 providing additional legislative intent; specifying  
3623 application to homestead property; specifying the existing

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

three separate accounts of the corporation as providing coverage only for homestead property; providing a definition; providing for an additional separate account for nonhomestead property; requiring separate maintenance of revenues, assets, liabilities, losses, and expenses attributable to the nonhomestead account; providing authority and requirements for coverage rates for nonhomestead properties; providing for office review of such rates or rating plans for being inadequate or unfairly discriminatory; authorizing the office to order discontinuance of certain policies under certain circumstances; requiring insurers to maintain certain records; providing for reducing regular assessments by the Citizen policyholder surcharge under certain circumstances; providing for deficit assessments against nonhomestead account policyholders under certain circumstances; authorizing the board of governors of the corporation to make loans from the homestead accounts to the nonhomestead account under certain circumstances; specifying ineligibility of certain nonhomestead account policyholders for certain coverage under certain circumstances; revising the requirements of the plan of operation of the corporation; requiring additional procedures for determining eligibility of a risk for coverage; providing for determination of regular assessments to which the Citizen policyholder surcharge applies; specifying a minimum requirement for a hurricane deductible for certain property; specifying contents of required statements in applications for nonhomestead and homestead account coverage; requiring the corporation to purchase certain catastrophe reinsurance; limiting

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

3655 coverage on mobile or manufactured homes to actual cash  
3656 value; providing additional legislative intent relating to  
3657 rate adequacy in the residual market; deleting a  
3658 restriction on limited apportionment companies liability  
3659 for assessments; providing procedures on the office's  
3660 review of the corporations rate filings; requiring a  
3661 delayed implementation on certain rates for Monroe County;  
3662 deleting provisions relating to a rate methodology panel  
3663 appointed by the corporation; providing requirements and  
3664 limitations for a corporation adopted bonus payment  
3665 program; providing a criterion for calculating reduction  
3666 or increase in probable maximum loss; delaying application  
3667 of certain high-risk area boundary reduction provisions;  
3668 providing for application of provisions relating to  
3669 homestead and nonhomestead accounts to certain policies;  
3670 requiring certain corporation employees to comply with  
3671 certain ethics code requirements; requiring corporation  
3672 employees to notify the Division of Insurance Fraud of  
3673 probable commissions of fraud by corporation employees;  
3674 requiring the corporation to report on the feasibility of  
3675 requiring authorized insurers to issue and service  
3676 specified policies of the corporation; specifying report  
3677 requirements; providing immunity to producing agents and  
3678 employees for specified actions taken relating to removal  
3679 of policies from the corporation; providing a limitation;  
3680 providing legislative intent; creating a High Risk  
3681 Eligibility Panel; providing for appointment of panel  
3682 members and member's terms; providing for administration  
3683 of the panel by the corporation; prohibiting compensation  
3684 and per diem and travel expenses; providing an exception;  
3685 requiring the panel to report annually to the Legislature

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

3686 on the certain areas that should be included in the  
3687 Citizens Property Insurance Corporation high risk account;  
3688 specifying factors to be considered by the panel;  
3689 providing duties of the office; authorizing the office to  
3690 conduct public hearings; requiring the panel to conduct an  
3691 analysis of property eligible for the high-risk account in  
3692 specified areas; requiring the panel to submit a report to  
3693 the office and corporation; providing requirements of the  
3694 report; amending s. 627.4035, F.S.; providing for a waiver  
3695 of a written authorization requirement to pay claims by  
3696 debit card or other electronic transfer; providing  
3697 construction relating to limiting the liability of an  
3698 insurer for certain replacement costs; amending s.  
3699 627.701, F.S.; providing for the option of a reduction in  
3700 hurricane deductibles when certain mitigation measures are  
3701 taken; amending s. 627.7011, F.S.; limiting certain law  
3702 and ordinance coverage; deleting application to personal  
3703 property; requiring insurers to issue separate checks for  
3704 certain expenses and requiring certain checks to be issued  
3705 directly to a policyholder; creating s. 627.7019, F.S.;  
3706 requiring the Financial Services Commission to adopt rules  
3707 imposing standardized requirements applicable to insurers  
3708 after certain natural events; providing criteria;  
3709 providing requirements of the Office of Insurance  
3710 Regulation; prohibiting certain conflicting emergency  
3711 rules; amending s. 627.727, F.S.; correcting a cross-  
3712 reference; amending s. 631.181, F.S.; providing an  
3713 exception to certain requirements for a signed statement  
3714 for certain claims; providing requirements; amending s.  
3715 631.54, F.S.; defining the term "homeowner's insurance";  
3716 amending s. 631.55, F.S.; correcting a cross-reference;

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

3717 amending s. 631.57, F.S.; revising requirements and  
3718 limitations for obligations of the Florida Insurance  
3719 Guaranty Association for covered claims; authorizing the  
3720 association to contract with counties, municipalities, and  
3721 legal entities to issue revenue bonds for certain  
3722 purposes; authorizing the Office of Insurance Regulation  
3723 to levy assessments and emergency assessments on insurers  
3724 under certain circumstances for certain bond repayment  
3725 purposes; providing requirements for and limitations on  
3726 such assessments; providing for payment, collection, and  
3727 distribution of such assessments; requiring insurers to  
3728 include an analysis of revenues from such assessments in a  
3729 required report; providing rate filing requirements for  
3730 insurers relating to such assessments; providing for  
3731 continuing annual assessments under certain circumstances;  
3732 specifying emergency assessments as not premium and not  
3733 subject to certain taxes, fees, or commissions; specifying  
3734 insurer liability for emergency assessments; providing an  
3735 exception; creating s. 631.695, F.S.; providing  
3736 legislative findings and purposes; providing for issuance  
3737 of revenue bonds through counties and municipalities to  
3738 fund assistance programs for paying covered claims for  
3739 hurricane damage; providing procedures, requirements, and  
3740 limitations for counties, municipalities, and the Florida  
3741 Insurance Guaranty Association, Inc., relating to issuance  
3742 and validation of such bonds; prohibiting pledging the  
3743 funds, credit, property, and taxing power of the state,  
3744 counties, and municipalities for payment of bonds;  
3745 specifying authorized uses of bond proceeds; limiting the  
3746 term of bonds; specifying a state covenant to protect  
3747 bondholders from adverse actions relating to such bonds;

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

3748 specifying exemptions for bonds, notes, and other  
3749 obligations of counties and municipalities from certain  
3750 taxes or assessments on property and revenues; authorizing  
3751 counties and municipalities to create a legal entity to  
3752 exercise certain powers; requiring the association to  
3753 issue an annual report on the status of certain uses of  
3754 bond proceeds; providing report requirements; requiring  
3755 the association to provide a copy of the report to the  
3756 Legislature and Chief Financial Officer; prohibiting  
3757 repeal of certain provisions relating to certain bonds  
3758 under certain circumstances; amending s. 817.234, F.S.;  
3759 providing an additional circumstance that constitutes  
3760 committing insurance fraud; creating the Task Force on  
3761 Hurricane Mitigation and Hurricane Insurance for Mobile  
3762 and Manufactured Homes; providing for administration by  
3763 the office; specifying additional agency administrative  
3764 staff; providing for appointment of task force members;  
3765 requiring members to serve without compensation; providing  
3766 for per diem and travel expenses; providing purpose and  
3767 intent; requiring the task force to address specified  
3768 issues; requiring a report to the Governor, Chief  
3769 Financial Officer, and Legislature; providing for  
3770 expiration of the task force; requiring the Office of  
3771 Insurance Regulation to submit reports to the Legislature  
3772 relating to the insurability of certain attached or free  
3773 standing structures and decreases in policyholder  
3774 hurricane deductibles based on policyholder hurricane  
3775 damage mitigation measures; providing report requirements;  
3776 providing duties of the office; requiring the Office of  
3777 Insurance Regulation to conduct a study of a rating system  
3778 to assist homeowners in determining the wind resistance



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

3779 factors; requiring the Department of Financial Services to  
3780 implement a pilot program; providing report requirements;  
3781 providing appropriations; specifying uses and purposes of  
3782 appropriations; providing effective dates.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

2

Amendment No. (for drafter's use only)

Bill No. HB 7225 CS

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Commerce Council

Representative(s) Grimsley offered the following:

**Amendment (with title amendment)**

Between line(s) 559 and 560 insert:

Section 4. Section 215.559, Florida Statutes, is amended  
to read:

215.559 Hurricane Loss Mitigation Program.--

(1) There is created a Hurricane Loss Mitigation Program.

The Legislature shall annually appropriate \$17.5 ~~\$10~~ million of  
the moneys authorized for appropriation under s. 215.555(7)(c)  
from the Florida Hurricane Catastrophe Fund to the Department of  
Community Affairs for the purposes set forth in this section.

(2)(a) Seven million dollars in funds provided in  
subsection (1) shall be used for programs to improve the wind  
resistance of residences and mobile homes, including loans,  
subsidies, grants, demonstration projects, and direct  
assistance; cooperative programs with local governments and the  
Federal Government; and other efforts to prevent or reduce  
losses or reduce the cost of rebuilding after a disaster.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

(b) Three million dollars in funds provided in subsection (1) shall be used to retrofit existing facilities used as public hurricane shelters. The department must prioritize the use of these funds for projects included in the September 1, 2000, version of the Shelter Retrofit Report prepared in accordance with s. 252.385(3), and each annual report thereafter. The department must give funding priority to projects in regional planning council regions that have shelter deficits and to projects that maximize use of state funds.

(c). Seven million five hundred thousand dollars in funds provided in subsection (1) shall be used for the Manufactured Housing and Mobile Home Mitigation and Enhancement Program as set forth in subsection (4)(b).

(3) By the 2006-2007 fiscal year, the Department of Community Affairs shall develop a low-interest loan program for homeowners and mobile home owners to retrofit their homes with fixtures or apply construction techniques that have been demonstrated to reduce the amount of damage or loss due to a hurricane. Funding for the program shall be used to subsidize or guaranty private-sector loans for this purpose to qualified homeowners by financial institutions chartered by the state or Federal Government. The department may enter into contracts with financial institutions for this purpose. The department shall establish criteria for determining eligibility for the loans and selecting recipients, standards for retrofitting homes or mobile homes, limitations on loan subsidies and loan guaranties, and other terms and conditions of the program, which must be specified in the department's report to the Legislature on January 1, 2006, required by subsection (8). For the 2005-2006 fiscal year, the Department of Community Affairs may use up to

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

51 \$1 million of the funds appropriated pursuant to paragraph  
52 (2)(a) to begin the low-interest loan program as a pilot project  
53 in one or more counties. The Department of Financial Services,  
54 the Office of Financial Regulation, the Florida Housing Finance  
55 Corporation, and the Office of Tourism, Trade, and Economic  
56 Development shall assist the Department of Community Affairs in  
57 establishing the program and pilot project. The department may  
58 use up to 2.5 percent of the funds appropriated in any given  
59 fiscal year for administering the loan program. The department  
60 may adopt rules to implement the program.

61 (4)(a) Forty percent of the total appropriation in  
62 paragraph (2)(a) shall be used to inspect and improve tie-downs  
63 for mobile homes. ~~Within 30 days after the effective date of~~  
64 ~~that appropriation, the department shall contract with a public~~  
65 ~~higher educational institution in this state which has previous~~  
66 ~~experience in administering the programs set forth in this~~  
67 ~~subsection to serve as the administrative entity and fiscal~~  
68 ~~agent pursuant to s. 216.346 for the purpose of administering~~  
69 ~~the programs set forth in this subsection in accordance with~~  
70 ~~established policy and procedures. The administrative entity~~  
71 ~~working with the advisory council set up under subsection (6)~~  
72 ~~shall develop a list of mobile home parks and counties that may~~  
73 ~~be eligible to participate in the tie-down program.~~

74 (b)1. There is created the Manufactured Housing and Mobile  
75 Home Mitigation and Enhancement Program. The program shall  
76 require the mitigation of damage to or enhancement of homes for  
77 the areas of concern raised by the Department of Highway Safety  
78 and Motor Vehicles in the 2004-2005 Hurricane Reports on the  
79 effects of the 2004 and 2005 hurricanes on manufactured and  
80 mobile homes in this state. The mitigation or enhancement shall

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

81 include, but not be limited to, problems associated with  
82 weakened trusses, studs, and other structural components caused  
83 by wood rot or termite damage; site-built additions; or tie-down  
84 systems and may also address any other issues deemed appropriate  
85 by Tallahassee Community College, the Federation of Manufactured  
86 Home Owners of Florida, Inc., the Florida Manufactured Housing  
87 Association, and the Department of Highway Safety and Motor  
88 Vehicles. The program shall include an education and outreach  
89 component to ensure that owners of manufactured and mobile homes  
90 are aware of the benefits of participation.

91 2. The program shall be a grant program that ensures  
92 entire manufactured home communities and mobile home parks may  
93 be improved wherever practicable. The moneys appropriated for  
94 this program shall be distributed directly to Tallahassee  
95 Community College for the uses set forth under this act.

96 3. Upon evidence of completion of the program, the  
97 Citizens Property Insurance Corporation shall grant, on a pro  
98 rata basis, actuarially reasonable discounts, credits, or other  
99 rate differentials or appropriate reductions in deductibles for  
100 the properties of owners of manufactured homes or mobile homes  
101 on which fixtures or construction techniques that have been  
102 demonstrated to reduce the amount of loss in a windstorm have  
103 been installed or implemented. The discount on the premium  
104 shall be applied to subsequent renewal premium amounts.

105 Premiums of the Citizens Property Insurance Corporation shall  
106 reflect the location of the home and the fact that the home has  
107 been installed in compliance with building codes adopted after  
108 Hurricane Andrew.

109 4. On or before January 1 of each year, Tallahassee  
110 Community College shall provide a report of activities under

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

111 this section to the Governor, the President of the Senate, and  
112 the Speaker of the House of Representatives. The report shall  
113 set forth the number of homes that have taken advantage of the  
114 program, the types of enhancements and improvements made to the  
115 manufactured or mobile homes and attachments to such homes, and  
116 whether there has been an increase of availability of insurance  
117 products to manufactured or mobile home owners.

118  
119 Tallahassee Community College shall develop the programs set  
120 forth in this subsection in consultation with the Federation of  
121 Manufactured Home Owners of Florida, Inc., the Florida  
122 Manufactured Housing Association, and the Department of Highway  
123 Safety and Motor Vehicles. The moneys appropriated for these  
124 programs shall be distributed directly to Tallahassee Community  
125 College for the uses set forth herein.

126 (5) Of moneys provided to the Department of Community  
127 Affairs in paragraph (2)(a), 10 percent shall be allocated to a  
128 Type I Center within the State University System dedicated to  
129 hurricane research. The Type I Center shall develop a  
130 preliminary work plan approved by the advisory council set forth  
131 in subsection (6) to eliminate the state and local barriers to  
132 upgrading existing mobile homes and communities, research and  
133 develop a program for the recycling of existing older mobile  
134 homes, and support programs of research and development relating  
135 to hurricane loss reduction devices and techniques for site-  
136 built residences. The State University System also shall consult  
137 with the Department of Community Affairs and assist the  
138 department with the report required under subsection (8).

139 (6) Except for the programs set forth in subsection (4),  
140 the Department of Community Affairs shall develop the programs

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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141 set forth in this section in consultation with an advisory  
142 council consisting of a representative designated by the Chief  
143 Financial Officer, a representative designated by the Florida  
144 Home Builders Association, a representative designated by the  
145 Florida Insurance Council, a representative designated by the  
146 Federation of Manufactured Home Owners, a representative  
147 designated by the Florida Association of Counties, and a  
148 representative designated by the Florida Manufactured Housing  
149 Association.

150 (7) Moneys provided to the Department of Community Affairs  
151 under this section are intended to supplement other funding  
152 sources of the Department of Community Affairs and may not  
153 supplant other funding sources of the Department of Community  
154 Affairs.

155 (8) On January 1st of each year, the Department of  
156 Community Affairs shall provide a full report and accounting of  
157 activities under this section and an evaluation of such  
158 activities to the Speaker of the House of Representatives, the  
159 President of the Senate, and the Majority and Minority Leaders  
160 of the House of Representatives and the Senate.

161 (9) This section is repealed June 30, 2011.  
162

163 ===== T I T L E A M E N D M E N T =====

164 Remove line(s) 31 and insert:

165 adopt rules; amending s. 215.559, F.S.; requiring an annual  
166 appropriation; requiring use of appropriated money for a  
167 specified purpose; deleting obsolete language; creating the  
168 Manufactured Housing and Mobile Home Mitigation and Enhancement  
169 Program for certain purposes; requiring Tallahassee Community  
170 College to develop the program in consultation with certain

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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171 entities; specifying certain requirements of the program as to  
172 certain concerns of the Department of Highway Safety and Motor  
173 Vehicles relating to manufactured homes and mobile homes;  
174 specifying the program as a grant program for improvement of  
175 mobile home and manufactured home parks; providing for  
176 distribution of the grants to Tallahassee Community College for  
177 certain purposes; requiring Citizens Property Insurance  
178 Corporation to grant certain insurance discounts, credits, rate  
179 differentials, or deductible reductions for property insurance  
180 premiums for manufactured home or mobile home owners; specifying  
181 criteria for such premiums; specifying funding for tie-down  
182 enhancement systems; requiring Tallahassee Community College to  
183 provide a program report each year to the Governor and  
184 Legislature; providing report requirements; creating s. 252.63,  
185 F.S.; providing purpose

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## HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. HB 7225 CS

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Council/Committee hearing bill: Commerce Council

2 Representative(s) Farkas offered the following:

3  
4 **Substitute Amendment to Amendment by Rep. Grimsley (with**  
5 **title amendment)**

6 Remove line(s) 611-623 and insert:

7 (3)(a)(4) Forty percent of the total appropriation in  
8 paragraph (2)(a) shall be used to inspect and improve tie-downs  
9 for mobile homes. Within 30 days after the effective date of  
10 that appropriation, the department shall contract with a public  
11 higher educational institution in this state which has previous  
12 experience in administering the programs set forth in this  
13 subsection to serve as the administrative entity and fiscal  
14 agent pursuant to s. 216.346 for the purpose of administering  
15 the programs set forth in this subsection in accordance with  
16 established policy and procedures. The administrative entity  
17 working with the advisory council set up under subsection (6)  
18 shall develop a list of mobile home parks and counties that may  
19 be eligible to participate in the tie-down program.

20 (b)1. There is created the Manufactured Housing and Mobile  
21 Home Hurricane Mitigation Program. The program shall require

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

22 the mitigation of damage of homes for the areas of concern  
23 raised by the Department of Highway Safety and Motor Vehicles in  
24 the 2004-2005 Hurricane Reports on the effects of the 2004 and  
25 2005 hurricanes on manufactured and mobile homes in this state.  
26 The mitigation shall include, but not be limited to, problems  
27 associated with weakened trusses, studs, and other structural  
28 components; site-built additions; or tie-down systems and may  
29 also address any other issues deemed appropriate by the  
30 Department of Community Affairs upon consultation with the  
31 Tallahassee Community College, the Federation of Manufactured  
32 Home Owners of Florida, Inc., the Florida Manufactured Housing  
33 Association, and the Department of Highway Safety and Motor  
34 Vehicles. The program may include an education and outreach  
35 component to ensure that owners of manufactured and mobile homes  
36 are aware of the benefits of participation.

37 2. The program shall include the offering of a matching  
38 grant to owners of manufactured and mobile homes manufactured  
39 after 1993 only. Homeowners accepted for the program shall be  
40 eligible to qualify for a \$5,000 dollar-for-dollar matching  
41 grant in which the homeowner may receive up to \$2,500 in state  
42 monies. The monies appropriated for this program shall be  
43 distributed directly to the Department of Community Affairs for  
44 the uses set forth under this subsection.

45 3. Upon evidence of completion of the program, the  
46 Citizens Property Insurance Corporation shall grant, on a pro  
47 rata basis, actuarially reasonable discounts, credits, or other  
48 rate differentials or appropriate reductions in deductibles for  
49 the properties of owners of manufactured homes or mobile homes  
50 on which fixtures or construction techniques that have been  
51 demonstrated to reduce the amount of loss in a windstorm have

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

52 been installed or implemented. The discount on the premium  
53 shall be applied to subsequent renewal premium amounts.

54 Premiums of the Citizens Property Insurance Corporation shall  
55 reflect the location of the home and the fact that the home has  
56 been installed in compliance with building codes adopted after  
57 Hurricane Andrew.

58 4. On or before January 1 of each year, the Department of  
59 Community Affairs shall provide a report of activities under  
60 this subsection to the Governor, the President of the Senate,  
61 and the Speaker of the House of Representatives. The report  
62 shall set forth the number of homes that have taken advantage of  
63 the program, the types of enhancements and improvements made to  
64 the manufactured or mobile homes and attachments to such homes,  
65 and whether there has been an increase of availability of  
66 insurance products to manufactured or mobile home owners.

67  
68  
69 ===== T I T L E A M E N D M E N T =====

70 Remove line(s) 3598 and insert:

71 interest loan program for homeowners; creating the Manufactured  
72 Housing and Mobile Home Hurricane Mitigation Program for certain  
73 purposes; requiring the Department of Community Affairs to  
74 develop the program in consultation with certain entities;  
75 specifying certain requirements of the program as to certain  
76 concerns of the Department of Highway Safety and Motor Vehicles  
77 relating to manufactured homes and mobile homes; specifying the  
78 program as a matching grant program for improvement of mobile  
79 home and manufactured homes; providing for distribution of the  
80 grants to the Department of Community Affairs for certain  
81 purposes; requiring Citizens Property Insurance Corporation to

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

82 | grant certain insurance discounts, credits, rate differentials,  
83 | or deductible reductions for property insurance premiums for  
84 | manufactured home or mobile home owners; specifying criteria for  
85 | such premiums; requiring a program report each year to the  
86 | Governor and Legislature; providing report requirements;  
87 | amending s. 626.918,

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. HB 7225 CS

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Commerce Council

Representative(s) Farkas offered the following:

**Amendment (with title amendment)**

Remove line(s) 3525-3539 and insert:

(5) For fiscal year 2006-2007, the nonrecurring sum of \$392.5 million is appropriated to the Department of Financial Services from the Florida Hurricane Damage Prevention Trust Fund, Special Category - Florida Comprehensive Hurricane Damage Mitigation Program. The department may spend up to 1 percent of the funds appropriated to administer the program. Notwithstanding s. 216.301, Florida Statutes, and pursuant to s. 216.351, Florida Statutes, any unexpended balance from this appropriation shall be carried forward at the end of each fiscal year until the 2010-2011 fiscal year. At the end of the 2010-2011 fiscal year, any obligated funds for qualified projects that are not yet disbursed shall remain with the department to be used for the purposes of this act. Any unobligated funds of this appropriation shall revert to the Florida Hurricane Damage Prevention Trust Fund at the end of the 2010-2011 fiscal year.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

21       (6) For fiscal year 2006-2007, the nonrecurring sum of  
22       \$7.5 million is appropriated to the Department of Community  
23       Affairs from the Florida Hurricane Damage Prevention Trust Fund,  
24       Special Category - Florida Comprehensive Hurricane Damage  
25       Mitigation Program. The department may spend up to 5 percent of  
26       the funds appropriated to administer the Manufactured Housing  
27       and Mobile Home Hurricane Mitigation Program. Notwithstanding s.  
28       216.301, Florida Statutes, and pursuant to s. 216.351, Florida  
29       Statutes, any unexpended balance from this appropriation shall  
30       be carried forward at the end of each fiscal year until the  
31       2010-2011 fiscal year. At the end of the 2010-2011 fiscal year,  
32       any obligated funds for qualified projects that are not yet  
33       disbursed shall remain with the department to be used for the  
34       purposes of this act. Any unobligated funds of this  
35       appropriation shall revert to the Florida Hurricane Damage  
36       Prevention Trust Fund at the end of the 2010-2011 fiscal year.

37  
38       ===== T I T L E   A M E N D M E N T =====

39       Remove line(s)                      and insert:  
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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. HB 7225

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill:

Representative(s) Jennings offered the following:

**Amendment to Strike-all Amendment by Rep. Ross**

Remove line(s) 1095-1099 and insert:

includes property covered by tenant's insurance; commercial  
lines residential policies; hospitals licensed under chapter  
395; care retirement and continuing care retirement

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. HB 7225 CS

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Commerce Council

Representative(s) Ross offered the following:

**Substitute Amendment for Amendment by Representative  
Jennings (with title amendment)**

Remove line(s) 1095-1100 and insert:  
includes property covered by tenant's insurance; commercial  
lines residential policies; any county, district, or municipal  
hospital, or hospital licensed by any not-for-profit corporation  
which is qualified under s. 501(c)(3) of the United States  
Internal Revenue Code; and continuing care retirement  
communities certified under chapter 651. The accounts providing

===== T I T L E A M E N D M E N T =====

Remove line(s) and insert:

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES  
Amendment No. (for drafter's use only)

Bill No. HB 7225 CS

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Commerce Council

Representative(s) Jennings offered the following:

**Amendment to Strike-all Amendment by Representative Ross  
(with directory and title amendments)**

Between line(s) 2849 and 2850 insert:

(3)(a) A policy of residential property insurance shall include a deductible amount applicable to hurricane losses no lower than \$500 and no higher than 2 percent of the policy dwelling limits with respect to personal lines residential risks, and no higher than 3 percent of the policy limits with respect to commercial lines residential risks; however, if a risk was covered on August 24, 1992, under a policy having a higher deductible than the deductibles allowed by this paragraph, a policy covering such risk may include a deductible no higher than the deductible in effect on August 24, 1992. Notwithstanding the other provisions of this paragraph, a personal lines residential policy covering a risk valued at \$50,000 or less may include a deductible amount attributable to hurricane losses no lower than \$250, and a personal lines residential policy covering a risk valued at \$100,000 or more may include a deductible amount attributable to hurricane losses no higher than 10 percent of the policy limits unless subject to

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

24 a higher deductible on August 24, 1992; however, no maximum  
25 deductible is required with respect to a personal lines  
26 residential policy covering a risk valued at more than \$500,000.  
27 An insurer may require a higher deductible, provided such  
28 deductible is the same as or similar to a deductible program  
29 lawfully in effect on June 14, 1995. In addition to the  
30 deductible amounts authorized by this paragraph, an insurer may  
31 also offer policies with a copayment provision under which,  
32 after exhaustion of the deductible, the policyholder is  
33 responsible for 10 percent of the next \$10,000 of insured  
34 hurricane losses.

35 (b)1. Except as otherwise provided in this paragraph,  
36 prior to issuing a personal lines residential property insurance  
37 policy on or after January 1, 2006, or prior to the first  
38 renewal of a residential property insurance policy on or after  
39 January 1, 2006, the insurer must offer alternative deductible  
40 amounts applicable to hurricane losses equal to \$500, 2 percent,  
41 5 percent, and 10 percent of the policy dwelling limits, unless  
42 the specific percentage deductible is less than \$500. The  
43 written notice of the offer shall specify the hurricane or wind  
44 deductible to be applied in the event that the applicant or  
45 policyholder fails to affirmatively choose a hurricane  
46 deductible. The insurer must provide such policyholder with  
47 notice of the availability of the deductible amounts specified  
48 in this paragraph in a form approved by the office in  
49 conjunction with each renewal of the policy. The failure to  
50 provide such notice constitutes a violation of this code but  
51 does not affect the coverage provided under the policy.

52 2. This paragraph does not apply with respect to a  
53 deductible program lawfully in effect on June 14, 1995, or to  
54 any similar deductible program, if the deductible program

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

requires a minimum deductible amount of no less than 2 percent of the policy limits.

3. With respect to a policy covering a risk with dwelling limits of at least \$100,000, ~~but less than \$250,000~~, the insurer may, in lieu of offering a policy with a ~~\$500 hurricane or~~ wind deductible as required by subparagraph 1., offer a policy that the insurer guarantees it will not nonrenew for reasons of reducing hurricane loss for one renewal period and that contains up to a 2 percent hurricane deductible, for two renewal periods and that contains up to a 5 percent hurricane deductible or for three renewal periods and that contains up to a 10 percent hurricane deductible ~~or wind deductible as required by~~ subparagraph 1. Notwithstanding the requirements of this paragraph, the Office of Insurance Regulation may approve the nonrenewal of such policies if the guarantee renewal of the policies may jeopardize the financial ratings of an insurer.

4. With respect to a policy covering a risk with dwelling limits of \$250,000 or more, the insurer need not offer the \$500 hurricane deductible as required by subparagraph 1., but must, except as otherwise provided in this subsection, offer the other hurricane deductibles as required by subparagraph 1.

===== D I R E C T O R Y   A M E N D M E N T =====

Remove line(s) 2847-2848 and insert:

Section 12. Effective July 1, 2006, subsection (3) is amended and effective January 1, 2007 subsection (9) is added to section 627.701, Florida Statutes, to read:

===== T I T L E   A M E N D M E N T =====

Remove line(s) 3699 and insert:

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

86 | 627.701, F.S.; requiring nonrenewals for specified hurricane  
87 | deductibles; providing for the option of a reduction in

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. HB 7225

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill:

Representative(s) Jennings offered the following:

**Amendment To Strike-all Amendment by Rep. Ross**

Remove line(s) 2707-2739 and insert:

(v) For the purposes of establishing a pilot program in Palm Beach, Pinellas, and Manatee counties, policies covering the peril of wind on any risk insured in the high-risk account of the corporation in these counties may be issued and serviced by the authorized insurer issuing and servicing the multi peril policy that excludes wind for such risks. Any authorized insurer performing such functions must do so for every risk in the high-risk account areas for which it issues and services the multi peril policy that excludes wind for such risks. An authorized insurer performing such servicing functions is deemed to be an independent contractor acting only as a servicing carrier for the corporation and performing only policy issuance, servicing and claims adjusting functions on behalf of the corporation for a fee as provided in this paragraph and paragraph (z). Except at the option of the authorized insurer, nothing herein shall be construed to make any authorized insurer a risk bearer for all

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

22 or any portion of the exposure of wind in the high-risk account  
23 of the corporation.

24 (w). The corporation shall develop necessary procedures to  
25 enable authorized insurers in Palm Beach, Pinellas, and Manatee  
26 counties to issue and service its high-risk account policies by  
27 January 1, 2007. Such procedures shall permit any authorized  
28 insurer issuing and servicing policies of the high-risk account  
29 to do so by either endorsing its current approved multi peril  
30 policy excluding wind with the appropriate approved policy of  
31 the high risk account of the corporation or by issuing its own  
32 approved policy covering wind along with other perils. Neither  
33 the office nor the corporation shall prevent or impede an  
34 authorized insurer from using its own procedures, applications,  
35 rating methodologies, underwriting rules, rating territories,  
36 and electronic systems in issuing, servicing or adjusting claims  
37 for such policies, endorsements or coverage under this  
38 subsubparagraph as long as such procedures, rules,  
39 methodologies, territories or systems were not specifically  
40 prohibited by the office prior to this provision becoming law.

41 (x). Any rate filing, or applicable portion thereof, which  
42 includes the peril of wind in the high risk account areas of the  
43 corporation submitted to the office by an authorized insurer  
44 issuing and servicing policies of the corporation under this  
45 subsection, shall be deemed approved upon submission to the  
46 office if the filing or the applicable portion of such filing,  
47 requests approval of a rate that is no more than the approved  
48 rate for similar risks insured in the high risk account of the  
49 corporation.

50 (y). In the event of notification of a loss incurred by a  
51 policyholder in the high-risk account of the corporation, the

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

52 authorized insurer issuing the policy and receiving the notice  
53 shall either adjust the claim or arrange for the claim to be  
54 adjusted and submit the claim file to the corporation for  
55 payment of the claim by the corporation. The authorized insurer  
56 may choose to pay the claim and request reimbursement of the  
57 amount of the claim from the corporation. The corporation shall  
58 reimburse such amount due the authorized insurer within 30 days  
59 of receiving the claim file. Other arrangements for transmitting  
60 the claim file or submitting claims to the corporation, claim  
61 payment or reimbursement, including electronic means, may be  
62 entered into upon written agreement between the corporation and  
63 the authorized insurer. Any adjuster and any authorized insurer  
64 adjusting claims under this section shall be subject to all  
65 applicable provisions of Part VI of Chapter 626. Any adjuster  
66 found to be in violation of s. 626.877 or s. 626.878 is subject  
67 to revocation or suspension of license as set forth in Chapter  
68 626, Part VI. Any claim of \$100,000 or more must be  
69 specifically reviewed by the corporation before payment is made  
70 to the policyholder or reimbursement is provided to the carrier.  
71 All claims are subject to random audit by the office up to one  
72 year after the claim is closed and payment is made to the  
73 policyholder. In the event of an excess payment by the  
74 authorized insurer the corporation shall notify the authorized  
75 insurer of the amount of overpayment and give the authorized  
76 insurer 60 days to provide information contesting the amount of  
77 overpayment. If agreement cannot be reached on the amount to be  
78 refunded to the corporation, if any, the authorized insurer may  
79 request dispute resolution through arbitration.

80 (z). Any fee owed to an authorized insurer issuing and  
81 servicing policies under this paragraph or paragraph (v). shall

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

82 be determined by the corporation, and notwithstanding any other  
83 provision of the law to the contrary, without approval from the  
84 office and shall be calculated as a percentage of the high-risk  
85 account premium and retained by the authorized insurer from the  
86 wind portion of the premium received from the policyholder. The  
87 fee shall be fair and reasonable based on the costs incurred,  
88 which shall include recurring costs and amortization of initial  
89 programming costs. Such fee shall also be based on other work  
90 required by the corporation to be performed by the authorized  
91 insurer, cost savings to the corporation, and the usual and  
92 customary fees paid to servicing carriers performing similar  
93 functions. At the request of any authorized insurer performing  
94 servicing functions under this section, such fee for services  
95 shall be subject to binding arbitration as set forth in s.  
96 627.062. The authorized insurer shall remit the balance of the  
97 premium less the fee to the corporation within 30 days of  
98 receipt of the premium from the policyholder. No authorized  
99 insurer shall be owed a fee for policies upon which it  
100 voluntarily provided coverage for wind including other perils on  
101 or after January 1, 2006 and prior to this section becoming law.

102 (aa). Any application for any risk to the high risk  
103 account of the corporation provided by the authorized insurer  
104 issuing and servicing the policy shall contain or be accompanied  
105 by the following statement in 12 point bold-face type:

106  
107 "THE WIND COVERAGE PROVIDED IS UNDERWRITTEN BY CITIZENS  
108 PROPERTY INSURANCE CORPORATION AND IS SUBJECT TO TAKEOUT BY AN  
109 AUTHORIZED INSURER. WIND COVERAGE PROVIDED BY A TAKEOUT  
110 COMPANY MAY NOT BE IDENTICAL TO THE WIND COVERAGE INITIALLY  
111 PROVIDED IN THIS POLICY."

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

112  
113       (bb). There shall be no liability on the part of, and no  
114 cause of action of any nature shall arise against, any  
115 authorized insurer issuing and servicing policies for the  
116 corporation as provided in this subsection while it is acting  
117 within the scope of its authority under this subsection or its  
118 agents or employees for any action taken by them in the  
119 performance of their duties or responsibilities under this  
120 subsection. Such immunity does not apply to actions for breach  
121 of any contract or agreement pertaining to insurance, or any  
122 willful tort.

123  
124 ===== T I T L E   A M E N D M E N T =====

125       Remove line(s) 3674-3677 and insert:  
126 establishing a pilot program in specified counties for private  
127 insurers to issue, adjust, and service specified insurance  
128 policies of the corporation; requiring the corporation to adopt  
129 procedures for implementation of the pilot program; allowing  
130 automatic approval of certain rate filings; providing procedures  
131 to be followed in the event of a claim under the pilot program;  
132 allowing insurers participating in the pilot program to obtain a  
133 fee for participation set by the corporation; providing  
134 notification to policyholders; providing immunity to insurers  
135 participating in the pilot program; providing immunity to  
136 producing agents and

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 7225

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Commerce Council

2 Representative(s) Galvano offered the following:

3  
4 **Amendment to Strike-all Amendment by Rep. Ross**

5 Remove line(s) 2275-2292 and insert:

6 (i) There shall be no liability on the part of, and no  
7 cause of action of any nature shall arise against, producing  
8 agents of record of the corporation or their employees for  
9 insolvency of any take-out insurer.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 7225

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Commerce Council

Representative(s) Galvano offered the following:

**Amendment to Strike-all Amendment by Rep. Ross (with title amendment)**

Remove line(s) 1120-1145 and insert:

(C) ~~(III)~~ A high-risk account for personal residential policies and commercial residential and commercial nonresidential property policies issued by the corporation or transferred to the corporation that provide coverage for the peril of wind on risks that are located in areas eligible for coverage in the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002. The high-risk account must also include quota share primary insurance under subparagraph (c)2. The area eligible for coverage under the high-risk account also includes the area within Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property, and the entire portion of any barrier island, and areas where no barrier island exists and the coastal area was not eligible for the high-risk account as

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

22 of January 1, 2006, then any area up to and including 2000 feet  
23 from the coast. The office may remove territory from the area  
24 eligible for wind-only and quota share coverage if, after a  
25 public hearing, the office finds that authorized insurers in the  
26 voluntary market are willing and able to write sufficient  
27 amounts of personal and commercial residential coverage for all  
28 perils in the territory, including coverage for the peril of  
29 wind, such that risks covered by wind-only policies in the  
30 removed territory could be issued a policy by the corporation in  
31 either the personal lines or commercial lines account without a  
32 significant increase in the corporation's probable maximum loss  
33 in such account. Removal of territory from the area eligible for  
34 wind-only or quota share coverage does not alter the assignment  
35 of wind coverage written in such areas to the high-risk account.  
36 Eligibility for the high-risk account for barrier islands and  
37 any area up to and including 2000 feet from the coast provided  
38 for by this sub-sub-sub-subparagraph becomes effective upon  
39 becoming a law and expires on December 1, 2006.

41 ===== T I T L E A M E N D M E N T =====

42 Remove line(s) 3626 and insert:  
43 definition; providing additional area to be included in the  
44 high-risk account; providing an expiration date; providing for  
45 an additional separate account

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. HB 7225 CS

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Commerce Council  
Representative(s) Patterson offered the following:

**Amendment to Strike-all Amendment by Rep. Ross**

Remove line(s) 1095-1100 and insert:

includes property covered by tenant's insurance; commercial  
lines residential policies; any county, district, or municipal  
hospital, or hospital licensed by any not-for-profit corporation  
which is qualified under s. 501(c)(3) of the United States  
Internal Revenue Code; and homes for the aged all or part of  
which is licensed under chapter 400, part II of chapter 400, or  
part III of chapter 651 and continuing care facilities certified  
under chapter 651 that receive an ad valorem property tax  
exemption under chapter 196. The accounts providing



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## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7227 CS      PCB IN 06-02      Florida Hurricane Damage Prevention Endowment Trust Fund  
**SPONSOR(S):** Insurance Committee  
**TIED BILLS:** HB 7225      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Insurance Committee	15 Y, 1 N	Callaway	Cooper
1) Fiscal Council	14 Y, 4 N, w/CS	Belcher	Kelly
2) Commerce Council		Callaway 	Randle 
3)			
4)			
5)			

### SUMMARY ANALYSIS

The bill creates the Florida Hurricane Damage Prevention Trust Fund (Trust Fund) within the Department of Financial Services. The Department of Financial Services will administer the Trust Fund, but the State Board of Administration will invest the trust fund moneys for endowment funds.

The Trust Fund will be used to carry out the purposes of s. 215.558, F.S., the Hurricane Prevention Endowment and s. 215.5586, F.S., the Comprehensive Hurricane Damage Mitigation Program. The authorized source of funds includes moneys transferred from other state funds, grants, donations, and applicable investment earnings. The use of funds is as authorized in ss. 215.558 and 215.5586, F.S., for the endowment and mitigation programs.

The bill requires an annual carry-forward of unused funds at the end of any fiscal year.

The bill provides for termination of the Trust Fund on or before July 1, 2010. Prior to termination, the Trust Fund must be reviewed pursuant to s. 215.3206(1) and (2), F.S.

The bill takes effect on July 1, 2006, but only if HB 7225 or similar legislation is adopted in the same legislative session or extension thereof and becomes law.

**Since the bill creates a new trust fund, it must be enacted by a three-fifths vote of the membership of each house of the Legislature.**

There is no fiscal impact on state or local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House principles.

#### B. EFFECT OF PROPOSED CHANGES:

This bill creates the Florida Hurricane Damage Prevention Trust Fund (Trust Fund) within the Department of Financial Services. The State Board of Administration will invest the endowment funds in the trust fund, but the trust fund administrator is the Department of Financial Services.

The Trust Fund will be used to carry out the purposes of s. 215.558, F.S., the Hurricane Prevention Endowment and s. 215.5586, F.S., the Comprehensive Hurricane Damage Mitigation Program. The authorized source of funds includes moneys transferred from the state funds, grants, donations, and applicable investment earnings. The use of funds is as authorized in ss. 215.558 and 215.5586, F.S., for the endowment and mitigation programs.

The bill requires a legislative review pursuant to s. 215.3206(1) and (2), F.S., prior to its scheduled constitutionally required termination of July 1, 2010. Any trust fund balance at the end of any fiscal year must be carried-forward.

#### C. SECTION DIRECTORY:

**Section 1:** Creates s. 215.5585, F.S., relating to the Florida Hurricane Damage Prevention Trust Fund.

**Section 2:** Makes the effective date of the bill July 1, 2006, but only if HB 7225 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:



None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

The legislation does not require expenditure of funds by local governments, does not reduce the authority to raise revenue, nor reduce the percentage of state tax shared with local governments.

**2. Other:**

Pursuant to Article III, Section 19(f)(1), of the State Constitution, no trust fund of the State of Florida or any public body may be created by law without a three-fifths vote of the membership of each House of the Legislature. Additionally, the bill creating the trust fund must be separate from any related substantive bill. Also, Article III, Section 19(f)(2), of the State Constitution, requires the trust fund to terminate not more than four years after its creation. Section 215.3206, F.S., provides the statutory process for legislative review of trust funds prior to their termination so that the Legislature can decide whether to re-create, re-create with amendment, or terminate any trust fund.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On March 16, 2006, the Insurance Committee considered the bill, adopted one amendment, and reported the bill favorably. The amendment adopted provided conforming language to the tied bill, PCB IN 06-01. The staff analysis was updated to reflect the adoption of the amendment.

On April 17, 2006, the Fiscal Council considered the bill, adopted one strike-all amendment, and reported the bill favorably. The amendment provided conforming language to the tied bill, HB 7225, to include the use of the fund to carry-out the purposes of s. 215.5586, F.S., the Florida Comprehensive Hurricane Damage Mitigation Program as well as s. 215.558, F.S., the Florida Hurricane Damage Prevention Endowment.

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CS

CHAMBER ACTION

The Fiscal Council recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Florida Hurricane Damage Prevention Trust Fund; creating s. 215.5585, F.S.; creating the Florida Hurricane Damage Prevention Trust Fund within the Department of Financial Services; providing for administration and investment of the fund; providing for the use of moneys in the fund; requiring balances in the fund to remain in the fund for certain purposes; providing for future review and termination or re-creation of the fund; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 215.5585, Florida Statutes, is created to read:

215.5585 Florida Hurricane Damage Prevention Trust Fund.--

(1) The Florida Hurricane Damage Prevention Trust Fund, is created within the Department of Financial Services. The department shall serve as administrator of the fund, and the

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CS

23   State Board of Administration shall invest moneys in the fund as  
24   provided in s. 215.558.

25       (2) The fund shall be used by the department to carry out  
26   the purposes of ss. 215.558 and 215.5586. The moneys credited to  
27   the fund include transfers from other state funds, as well as  
28   any grants or donations received for the purpose for which the  
29   fund is created.

30       (3) Notwithstanding the provisions of s. 216.301 and  
31   pursuant to s. 216.351, any balance in the trust fund at the end  
32   of any fiscal year shall remain in the trust fund at the end of  
33   that year and shall be available for carrying out the purposes  
34   of the trust fund.

35       (4) Pursuant to the provisions of s. 19(f)(2), Art. III of  
36   the State Constitution, the fund shall, unless terminated  
37   sooner, be terminated July 1, 2010. Prior to its scheduled  
38   termination, the fund shall be reviewed as provided in s.  
39   215.3206(1) and (2).

40       Section 2. This act shall take effect July 1, 2006, only  
41   if HB 7225 or similar legislation is adopted in the same  
42   legislative session or an extension thereof and becomes a law.

HB 7227

2006  
CS

CHAMBER ACTION

The Fiscal Council recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Florida Hurricane Damage Prevention Trust Fund; creating s. 215.5585, F.S.; creating the Florida Hurricane Damage Prevention Trust Fund within the Department of Financial Services; providing for administration and investment of the fund; providing for the use of moneys in the fund; requiring balances in the fund to remain in the fund for certain purposes; providing for future review and termination or re-creation of the fund; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 215.5585, Florida Statutes, is created to read:

215.5585 Florida Hurricane Damage Prevention Trust Fund.--

(1) The Florida Hurricane Damage Prevention Trust Fund, is created within the Department of Financial Services. The department shall serve as administrator of the fund, and the

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CS

State Board of Administration shall invest moneys in the fund as provided in s. 215.558.

(2) The fund shall be used by the department to carry out the purposes of ss. 215.558 and 215.5586. The moneys credited to the fund include transfers from other state funds, as well as any grants or donations received for the purpose for which the fund is created.

(3) Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of that year and shall be available for carrying out the purposes of the trust fund.

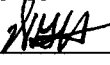

(4) Pursuant to the provisions of s. 19(f)(2), Art. III of the State Constitution, the fund shall, unless terminated sooner, be terminated July 1, 2010. Prior to its scheduled termination, the fund shall be reviewed as provided in s. 215.3206(1) and (2).

Section 2. This act shall take effect July 1, 2006, only if HB 7225 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1473                      Energy  
**SPONSOR(S):** Hasner and others  
**TIED BILLS:**                              **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	17 Y, 0 N	Holt	Holt
2) Fiscal Council	20 Y, 0 N	Dixon/Diez-Arquelles	Kelly
3) Commerce Council		Holt 	Randle 
4) _____	_____	_____	_____
5) _____	_____	_____	_____

### SUMMARY ANALYSIS

HB 1473 implements recommendations from the Florida Energy Plan. In general, the bill creates and revises several sections of law to devise a methodology for advancing the development of renewable technologies, promoting economic growth, diversifying fuel supply, as well as, streamlining the Power Plant Siting Act. More specifically, the bill:

- Creates the Renewable Energy Technologies Grants Program;
- Creates an Energy-Efficient Products Sales Tax Holiday from October 5, 2006, through October 11, 2006;
- Creates the Solar Energy System Incentive Program;
- Creates the Florida Energy Council;
- Creates a sales tax exemption for equipment, machinery, and other materials for renewable energy technologies;
- Creates a corporate investment tax credit for renewable energy technologies;
- Directs the Public Service Commission (PSC) to consider fuel diversity in reviewing 10-year site plans;
- Allows the PSC to require electric utilities to have their infrastructure exceed the National Electric Safety Code standards;
- Requires the PSC to direct a study of the electric transmission grid as well as examine the hardening of Florida's infrastructure to address issues arising from the 2004 and 2005 hurricane seasons; and
- Streamlines the Power Plant Siting Act by setting new timelines and streamlining procedures.

Further, the bill adjusts the criteria for the water projects grant program.

The Revenue Estimating Conference estimates that the provisions of this bill relating to the Energy-Efficient Products Sales Tax Holiday, the sales tax exemptions for renewable energy technologies, and the corporate income tax credits, will result in a negative fiscal impact of \$11.0 million to state government and \$1.2 million to local governments in FY 2006-07, and of \$14.3 million to state government and \$0.7 million to local governments in FY 2007-08. HB 5001, the General Appropriations Act, contains \$15 million (\$8.6m in General Revenue and \$6.4 in Trust) for the Renewable Energy Technologies Grant Program and \$5 million in General Revenue for the Solar Energy System Incentives Program. In addition, the bill provides an appropriation of \$61,379 from the General Revenue Fund to the Department of Revenue (DOR) to administer the Energy-Efficient Products Sales Tax Holiday.

This act shall take effect upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1473g.CC.doc  
**DATE:** 4/23/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government**-The bill creates the Florida Energy Council to advise the Governor, the President of the Senate, and the Speaker of the House of Representatives on energy issues. It also requires the PSC to direct a study on Florida's electric transmission grid. The report is to additionally address hardening of the state's infrastructure in response to the issues arising from the 2004 and 2005 hurricane seasons.

**Ensure Lower Taxes**-The bill creates the following: Renewable Energy Technologies Grant Program, Energy-Efficient Products Sales Tax Holiday, Solar Energy Systems Rebate Program, sales tax exemption for equipment, machinery and other renewable energy technologies, and renewable energy technologies investment tax credit.

**Promote Personal Responsibility/Empower Families**-The bill contains rebates and tax incentives to promote the sale of energy-efficient products and the use of renewable energy technologies.

**Maintain Public Security**-The bill provides incentives for the investment in renewable energy and alternative fuels, which may reduce the state's dependence on imported fossil fuels. The bill requires the PSC to consider fuel diversity when analyzing the utilities' 10-year site plans, thereby also potentially easing the state's dependence on any particular fuel for the generation of electricity. The bill also allows the PSC to require electric utilities to construct their infrastructure to standards that exceed the National Electric Safety Code.

#### B. EFFECT OF PROPOSED CHANGES:

##### General Background

On November 10, 2005, Governor Jeb Bush issued Executive Order #05-241 directing the Department of Environmental Protection (DEP) to develop a comprehensive energy plan. On December 14, 2005, the Secretary of DEP hosted the Florida Energy Forum where various parties were able to provide input in developing the plan. As required by the Executive Order, DEP issued the Florida Energy Plan on January 17, 2005.

The energy plan contained recommendations that spanned several areas. Those areas covered issues of diversification, conservation, and economic incentives. HB 1473 comprehensively implements initiatives from each of those areas.

According to research conducted by DEP in developing the Florida Energy Plan, the following background information was provided:

Florida's economy and quality of life depends on a secure, adequate and reliable supply of energy. As the fourth most populous state, Florida ranks third nationally in total energy consumption. With more than 17 million citizens and nearly 1,000 new residents arriving daily, Florida is one of the fastest growing states in the nation. Because of its expanding economy, current forecasts indicate that Florida's electricity consumption will increase by close to 30 percent over the next ten years.

Since the last review of Florida's energy policy in 2000, several unpredictable events have heightened concern over energy reliability, security, and supply. The 2003 blackout in the northeast, along with



tremendous back-to-back hurricane seasons in 2004 and 2005, demonstrated the impact power outages and fuel interruptions have on the nation's economic welfare.

Producing less than one percent of the energy it consumes and limited by its geography, Florida is more susceptible to interruptions in energy supply than any other state. Unlike other states that rely on petroleum pipelines for fuel delivery, more than 98 percent of Florida's transportation fuel arrives by sea. The state's reliance on imported petroleum products, in addition to its anticipated growth in consumption, underscores its vulnerability to fluctuations in the market and interruptions in fuel production, supply and delivery.

### Energy Production and a Growing Economy

Florida depends almost exclusively on other states and nations for supplies of oil and gasoline, generating less than one percent of the nation's crude oil production annually. To generate electricity, Florida primarily relies on natural gas, coal and oil imports.

Together, fossil fuels represent 86 percent of Florida's total generating capacity. Less than 10 percent of its generating capacity is derived from cleaner nuclear and renewable fuels. In fact, no new nuclear plants have entered service in Florida since 1983.

Current forecasts indicate that new generation capacity will be 80 percent natural gas-fired and 19 percent coal-fired. Meeting these projections could prove expensive at today's prices and lead to an over-reliance on one fuel type, affecting the reliability of electric utility generation supply in Florida. While expansions for natural gas capacity are needed and already underway, improving generation fuel diversity would enhance reliability over the long-term. Too great a reliance on a single fuel source leaves Floridians subject to the risks of price volatility and supply interruption.

### A New Class of Energy

Although the nation's reliance on traditional fossil fuels is currently high, Florida is investing in alternative fuels and developing "next generation" energy technologies. In 2003, Governor Jeb Bush launched "H2 Florida" to accelerate the commercialization of hydrogen technologies and spur economic investment in Florida's economy. With a four to one return on investment, Florida and its federal partners have invested \$9 million to date in hydrogen infrastructure. Construction of a "hydrogen highway" is underway, 28 hydrogen demonstration projects are in progress and more than 100 hydrogen research and development projects are taking place at Florida's universities.

Utilization of biofuels is in its infancy with the cost of renewable fuels relatively high compared with traditional hydrocarbon fuels. Currently, Florida has just one biodiesel facility and, absent a manufacturing plant, imports ethanol from refineries outside of the state. Increasing production, supply and infrastructure of biofuels through financial incentives would provide both economic and environmental returns for the state. Likewise, a stronger investment both residentially and commercially in solar technology would not only reduce utility costs but generate pollution-free power for Floridians. To date, solar technology has remained largely inefficient and expensive, however, costs are gradually decreasing as system quality and reliability increases. To encourage continued investment in solar energy, systems received a permanent exemption from Florida sales and use tax in 2005.

### Proposed Changes

Section 1: Legislative findings and intent: This section provides legislative findings and intent. Generally, the Legislature finds that advancing the development of renewable energy efficiency and technologies is important for the state's future, its energy stability and diversity, its environment, and the protection of its citizens' public health. Moreover, the development of renewable energy technologies has a correlated effect in reducing the demand for foreign fuels. To assist in the widespread

commercialization and application of renewable energy, the findings promote marketing, among other things, to stimulate economic growth, to generate ongoing research and development, to use the abundance of natural and renewable energy sources. These objectives are in addition to using the state's ability to attract significant federal research and development funds for its general welfare.

Section 2: Short title: The bill provides that ss. 377.801-377.806 may be cited as the "Florida Renewable Energy Technologies and Energy Efficiency Act."

Section 3: Purpose: This act is intended to provide matching grants to stimulate in-state capital investment and promote statewide utilization of renewable technologies. In order to accomplish these goals, the targeted grants program is designed to: 1) advance renewable technologies, and 2) encourage the residential and commercial use of incentives, such as rebates, tax exemptions, and regulatory certainty.

Section 4: Definitions: The bill provides the following definitions:

- (1) "Act" means the Florida Renewable Energy Technologies and Energy Efficiency Act.
- (2) "Approved metering equipment" means a device capable of measuring the energy output of a solar thermal system that has been approved by the commission.
- (3) "Commission" means the Florida Public Service Commission.
- (4) "Department" means the Department of Environmental Protection.
- (5) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, or any other public or private entity.
- (6) "Renewable energy" means electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power.
- (7) "Renewable energy technology" means any technology that generates or utilizes a renewable energy resource.
- (8) "Solar energy system" means equipment that provides for the collection and use of incident solar energy for water heating, space heating or cooling, or other applications that require a conventional source of energy such as petroleum products, natural gas, or electricity that performs primarily with solar energy. In other systems in which solar energy is used in a supplemental way, only those components that collect and transfer solar energy shall be included in this definition.
- (9) "Solar photovoltaic system" means a device that converts incident sunlight into electrical current.
- (10) "Solar thermal system" means a device that traps heat from incident sunlight in order to heat water.

Section 5: Renewable Energy Technologies Grant Program: The bill establishes within DEP the Renewable Energy Technologies Grant Program. The program provides renewable energy matching grants for demonstration, commercialization, research, and development projects relating to renewable energy technologies. Eligible entities for award consideration include: 1) municipalities and county governments, 2) established for-profit companies licensed to do business in the state, 3) in-state universities and colleges, 4) not-for-profit organizations, 5) other qualified persons, as determined by the department. Rulemaking authority is granted to DEP for adoption of application requirements, ranking application, and administering grant awards. Criteria are provided in the bill for DEP to consider when assessing applications for an award. It is also incumbent upon DEP to solicit the expertise of other state agencies and such solicited agencies shall be cooperative with DEP.

Section 6: Energy-Efficient Products Sales Tax Holiday: During the period from 12:01 a.m., October 5, 2006, through midnight, October 11, 2006, a tax-free week is established by the bill, and it shall be designated "Energy Efficiency Week." Specifically, the tax levied under ch. 212, F.S., may not be collected during this period on the sale of new energy-efficient products having a per product selling price of \$1,500 or less. This exemption only applies to items that are for noncommercial home or personal use, and does not apply when the product is purchased for trade, business, or resale.

"Energy-efficient product" is defined as a dishwasher, clothes washer, air conditioner, ceiling fan, incandescent or florescent light bulb, dehumidifier, programmable thermostat, or refrigerator that has been designated by the United States Environmental Protection Agency or by the United States Department of Energy as meeting or exceeding the requirements under the Energy Star Program of either agency. Purchases that are eligible for this exemption may not be made using a business or company credit or debit card or check. Any construction company, building contractor, or commercial business or entity that purchases or attempts to purchase the energy-efficient products exempt as provided in this section commits an unfair method of competition in violation of s. 501.204, F.S., which addresses unlawful acts and practices. In addition, the punishment for each violation is a civil penalty of up to \$10,000, as provided in s. 501.2075, F.S.

Section 7: Solar Energy System Incentives Program: Under this program, three solar rebate incentives are created. From July 1, 2006, through June 30, 2010, any Florida resident who purchases and installs a solar photovoltaic system, a solar thermal system, or a solar thermal pool heater is eligible to apply. However, application for a rebate must be made within 90 days after the purchase, and each system must meet the specific criteria outlined in the bill.

In general, the new solar photovoltaic system must be 2 kilowatts or larger, and the new solar thermal system must provide at least 50 percent of a building's hot water consumption. For the specific eligibility requirements, s. 337.806 reads in part:

(2) SOLAR PHOTOVOLTAIC SYSTEM INCENTIVE.

(a) Eligibility requirements. A solar photovoltaic system qualifies for a rebate if:

1. The system is installed by a state-licensed master electrician, electrical contractor, or solar contractor.
2. The system complies with state interconnection standards as provided by the commission.
3. The system complies with all applicable building codes as defined by the local jurisdictional authority.

(b) Rebate amounts. The rebate amount shall be set at \$4 per watt based on the total wattage rating of the system. The maximum allowable rebate per solar photovoltaic system installation shall be as follows:

1. \$20,000 for a residence.
2. \$100,000 for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization.

(3) SOLAR THERMAL SYSTEM INCENTIVE.

(a) Eligibility requirements. A solar thermal system qualifies for a rebate if:

1. The system is installed by a state-licensed solar or plumbing contractor.
2. The system complies with all applicable building codes as defined by the local jurisdictional authority.

(b) Rebate amounts. Authorized rebates for installation of solar thermal systems shall be as follows:

1. \$500 for a residence.
2. \$15 per 1,000 Btu for a maximum of \$5,000 for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization including condominiums or apartment buildings. Btu must be verified by approved metering equipment.

(4) SOLAR THERMAL POOL HEATER INCENTIVES.—

(a) Eligibility requirements. — A solar thermal pool heater qualifies for a rebate if:

1. The system is installed by a state-licensed solar or plumbing contractor.

2. The system complies with all applicable building codes as defined by the local jurisdictional authority.

(b) Rebate amounts. – Authorized rebates for installation of solar thermal pool heaters shall be \$100 per installation.

Moreover, the total dollar amount of all DEP-issued rebates is subject to any fiscal year appropriation for the program. DEP will publish on a regular basis a running rebate fund balance for each fiscal year. If applications exceed the available funds, unfunded applications roll-over to the next year with priority consideration. DEP shall adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to develop rebate applications and administer the issuance of rebates.

**Section 8: Florida Energy Council:** The bill creates the Florida Energy Council within DEP as an energy advisory group. The council is to advise the Governor, the President of the Senate, and the Speaker of the House of Representatives on current and projected energy issues including, but not limited to, transportation, generation, transmission, distributed generation, fuel supply issues, emerging technologies, efficiency and conservation. This diverse council shall be comprised of stakeholders, and may include utility providers, alternative energy providers, researchers, environmental scientists, fuel suppliers, technology manufacturers, environmental, consumer and public health use the principles of reliability, efficiency, affordability, and diversity in developing its recommendations. There will be nine voting members:

- The Secretary of DEP, or designee, serves as the council's chair
- The Chair of PSC, or designee, serves as the council's vice chair
- The Commissioner of Agriculture and Consumer Services, or designee
- Two members appointed by the Governor
- Two members appointed by the President of the Senate
- Two members appointed by the Speaker of the House of Representatives

Prior to September 1, 2006, all initial appointments shall be made. The appointments made by the Governor, the President of the Senate, the Speaker of the House of Representatives are for a term of two years, with members serving until their successors are appointed. Any vacancies are filled in the same manner as original appointments and are for the remainder of a vacated membership. Members are entitled to travel reimbursement and per diem, but they serve without compensation.

Additionally, DEP provides primary staff support to the council and it shall electronically record the meetings and preserve those recordings pursuant to chapters 119 and 257. Rulemaking authority is granted to DEP to implement the provisions of this section.

**Section 9: Sales Tax Exemption:** A sales tax exemption is created in s. 212.08, F.S., for equipment, machinery, and other materials for renewable energy technologies, and is available to a purchaser through a refund of previously paid taxes. This exemption is designed to assist in stimulating the development of in-state hydrogen technologies and biofuels. Enhancing the production, distribution and retail mechanisms supporting biofuels, this incentive may result in a reduction in the consumption of fossil fuels. There are currently four hydrogen fueling stations planned for installation, and those facilities are partially funded by DEP. Florida has no ethanol fuel production facilities or retail outlets selling ethanol blends to the public.

The bill creates the following definitions as used in this section:

a. "Biodiesel" means the mono-alkyl esters of long-chain fatty acids derived from plant or animal matter for use as a source of energy and meeting the specifications for biodiesel and biodiesel blends with petroleum products as adopted by the Department of Agriculture and Consumer Services. Biodiesel may refer to biodiesel blends designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend.

b. "Ethanol" means nominally anhydrous denatured alcohol produced by the fermentation of plant sugars meeting the specifications for fuel ethanol and fuel ethanol blends with petroleum products

as adopted by the Department of Agriculture and Consumer Services. Ethanol may refer to fuel ethanol blends designated EXX, where XX represents the volume percentage of fuel ethanol in the blend.

c. "Hydrogen fuel cells" means equipment using hydrogen or a hydrogen rich fuel in an electrochemical process to generate energy, electricity, or the transfer of heat.

The bill provides that the in-state sale or use of the following items is excluded from the tax imposed by this chapter:

a. Hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations, up to a limit of \$2 million in tax each state fiscal year.

b. Commercial stationary hydrogen fuel cells, up to a limit of \$1 million in tax each state fiscal year.

c. Materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-E85), including fueling infrastructure, transportation, and storage, up to a limit of \$1 million in tax each state fiscal year. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify for the exemption provided by this subsection.

DEP is the designated lead agency for submitting the list of items eligible for the exemption to the Department of Revenue (DOR). The bill directs DEP, in consultation with DOR, to develop the application for exemption, along with minimal criteria for the application content. Applicants are to also submit a sworn statement of information accuracy and to the section requirements being met. An application processing schedule is also outlined in the bill.

Rulemaking is granted to DOR for governing the manner and form of the refund applications and to additionally establish guidelines for requisites of an affirmative showing of qualification for exemption.

Rulemaking is also granted to DEP to ensure the exemptions do not exceed the provided limits, and DEP shall determine and publish on a regular basis the amount of sales tax funds remaining in each fiscal year.

This exemption is repealed on July 1, 2010.

Section 10: Confidentiality and information sharing: This section allows for the sharing of information between DEP and DOR related to the sales tax exemption and investment tax credit.

Section 11: Corporate income tax: This is a conforming change.

Section 12: Renewable energy technologies investment tax credit: The bill establishes the renewable energy technologies tax credit. Definitions in this section mirror those used in s. 212.08(7) for biodiesel, ethanol, and hydrogen fuel cell. A term is added to this section for "eligible cost" which means:

1. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of \$3 million per state fiscal year for all taxpayers, in connection with an investment in hydrogen powered vehicles and hydrogen vehicle fueling stations in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.

2. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of \$1.5 million per state fiscal year for all taxpayers, and limited to a maximum of \$12,000 per fuel cell, in connection with an investment in commercial stationary hydrogen fuel cells in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.

3. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of \$6.5 million per state fiscal year for all tax payers, in connection with an investment in the production, storage, and distribution of biodiesel (B10-B100) and ethanol (E10-E100) in the state, including the costs of

constructing, installing, and equipping such technologies in the state. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify as an eligible cost under this subsection.

The bill outlines and application process that is handled through DEP for this credit. Rulemaking authority is granted DOR relating to the forms required to claim a tax credit under this section, the requirements and basis for establishing an entitlement to a credit, and the examination and audit procedures required to administer this section.

DEP shall determine and publish on a regular basis the amount of available tax credits remaining in each fiscal year.

Section 13: Adjusted federal income: This section makes a conforming change.

Section 14: Ten-year site plans: Pursuant to s. 186.801, F.S., all major generating electric utilities are required to annually submit a Ten-Year Site Plan to the PSC for review. Each Ten-Year Site Plan contains projections of the utility's electric power needs for the next ten years and the general location of proposed power plant sites and major transmission facilities. As a result, the PSC performs a preliminary study of each Ten-Year Site Plan to determine whether it is "suitable" or "unsuitable." To aid in its review, the PSC receives comments from state, regional, and local planning agencies regarding various issues. Upon review completion, the PSC forwards its Ten-Year Site Plan review, to DEP for use in subsequent power plant siting proceedings.

To implement the provisions s. 186.801, F. S., the PSC has adopted Rules 25-22.070 through 25-22.072, F.A.C. These rules require electric utilities to file an annual Ten-Year Site Plans by April 1. However, utilities whose existing generating capacity is below 250 megawatts (MW) are exempt from this requirement unless the utility plans to build a new unit larger than 75 MW within the ten-year planning period.

In evaluating the 10-year site plans, the PSC is required to review:

- Need for electrical power in the area to be served.
- Anticipated environmental impact.
- Possible alternatives to the proposed plan.
- Views of appropriate local, state, and federal agencies.
- Consistency with the state comprehensive plan.
- Information of the state on energy availability and consumption.

The bill adds the "effect on fuel diversity within the state" to the above objectives considered by the PSC in evaluating the 10-year site plans.

Section 15: Jurisdiction of the PSC: Section 366.04, F.S., provides that the jurisdiction of the PSC includes prescribing and enforcing safety standards for electric transmission and distribution. This bill adds the phrase "at a minimum" when describing the safety standards the PSC must adopt. This allows the PSC to adopt stricter safety standards than the National Electrical Safety Code (NESC) as needed to protect Florida's electric system from disasters.

Section 16: Powers of the PSC: Section 366.05(1), F.S., reads in part:

366.05 Powers.—

(1) In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, and service rules and regulations to be observed by each public utility; to require repairs, improvements, additions, and extensions to the plant and equipment of any public utility when reasonably necessary to

promote the convenience and welfare of the public and secure adequate service or facilities. . .

The bill amends this section to give the PSC the power to adopt construction standards that exceed the NESC in order to ensure the reliable provision of service. In addition, the PSC is given the power to order the replacement of plant by a public utility.

Section 366.05(8), F.S., gives the PSC power over the state's electrical grid, and the authority, following certain proceeding, to require the installation or repair of necessary facilities if inadequacies with respect to the grid exist. The bill amends this section to strengthen PSC authority to require utilities to build additional facilities or repair existing facilities if the PSC determines that the electric grid is inadequate with respect to "fuel diversity or fuel supply reliability."

Section 17: The bill requires the PSC to direct a study on Florida's electric transmission grid. The study shall examine the efficiency and reliability of power transfer and emergency contingency conditions. Additionally, the study must examine the hardening of infrastructure to address issues raised from the 2004 and 2005 hurricane seasons. The results of the study shall be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 30, 2007.

Sections 18 through 40: These sections amend the Florida Electrical Power Plant Siting Act (PPSA). On the recommendation of the Florida Energy Plan, the proposed changes are to streamline the siting process by setting new timelines, streamlining procedures, and streamlining the determination of consistency with land use, among other things.

Created by the Legislature in 1973, the PPSA provides for certification (licensure) of steam electric or solar power plants which are 75 megawatts or larger in size. The plants can be gas-fired, combined-cycle units, nuclear units, or others that are fueled by more conventional means. Combustion turbine units can be permitted in conjunction with a certified facility, or as an addition via the modification process, but as a stand alone, this type of unit does not trigger the certification process.

DEP is the lead agency for coordinating the siting process. Plant certification may include the plant's directly associated facilities, which are necessary for the construction and operation, such as natural gas pipeline, rail lines, roadways, and electrical transmission lines. Final certification is issued by the siting board (Governor & Cabinet).

Section 18: Definitions: The bill amends several definitions s. 403.503, F.S., in order to broaden, delete and conform terms as used in this section. However, noteworthy are the amendments to two terms: 1) The revision to "electrical power plant" clarifies that associated facilities to be included in the definition of plant are those that are owned by the applicant. This gives the applicant the option to include associated facilities not owned by the applicant. 2) The revision to "completeness" is amended to incorporate the concept of "sufficiency". This change combines two review processes.

Section 19: Department of Environmental Protection: powers and duties: The bill broadens DEP powers and duties by expanding its rulemaking authority to include construction as a component to be included as it sets forth rules for environmental precautions in relation to power plants. DEP has the authority to issue final orders when there is no certification hearing, resulting in a significant saving in overall licensing time. DEP is also given the authority to issue emergency orders when emergency conditions require a short turn-around time. Other additional powers and duties include acting as clerk for the siting board as well as administering and managing the terms and conditions of the certification order, supporting documents and records for the life of the facility.

Section 20: Application for permits: The bill amends s. 403.5055, F.S., to provide that DEP include in its project analysis copies of proposed permits under federally delegated or approved permit programs.

The bill modifies the section to require such inclusion only if the permit is available at the time DEP issues its project analysis.

Section 21: Applicability and certification: The bill amends s. 405.506, F.S., relating to applicability and certification to include "thresholds." The section is amended to exempt cogeneration facilities which are expanding by less than 35 megawatts. This will assist in the development and utilization of an additional resource. The term "maximum electrical generator rating" replaces the term "maximum normal generator nameplate rating" in order to more accurately reflect the term of art in the industry.

Section 22: Distribution of application: Section 403.5064, F.S., is amended to read "Application schedules" in lieu of "Distribution of application." The date of certification commencement shall begin when the applicant distributes the appropriate number of certification applications and submits the application fee pursuant to 403.518, F.S. This change in the date of commencement will result in a time savings of approximately 22 days because the distribution to the affected parties is done sooner. A provision is added to provide that any amendment made prior to certification will be addressed as part of the original certification proceeding; however, the amendment may create a good cause of altering the time limits.

Further, this section provides that within 7 days after DEP files its proposed schedule, the administrative law judge (ALJ) will issue an order establishing a schedule for matters contained in the proposed schedule. The bill also clarifies notice provisions in order to reference the new notice section.

Section 23: Appointment of administrative law judge: This section is amended to clarify that the ALJ has all powers and duties granted pursuant to chapter 120, F.S., and by the laws and rules of DEP.

Section 24: Determination of completeness: The bill amends this section to give the applicant 30 days rather than 15 days to respond to a notice of incompleteness. A statement of completeness shall be filed with the Division of Administrative Hearings (DOAH), the applicant, and the parties, within 40 days in lieu of 15 days, after filing an application. The bill outlines the procedure for an applicant to follow when DEP declares an application incomplete.

Section 25: Informational public meetings: Section 403.50663, F.S., is created to establish that a local government or a regional planning council in whose jurisdiction the proposed plant exist may hold an information public meeting to inform the public about the proposed site and its associated facilities. The meeting must be noticed not less than 5 days prior to the date; however, the failure to hold an informational public meeting or the procedure used for the informational meeting are not grounds for the alteration of any time limitation or grounds to deny or condition certification.

Further, the bill clarifies that it is the legislative intent that local governments or regional planning councils attempt to hold such public meetings. Parties to the proceedings under this act shall be encouraged to attend; however, no party other than the applicant and the department shall be required to attend such informational public meetings.

Section 26: Land use consistency: Section 403.50665, F.S., is created to generally streamline the land use determination, and to require that the applicant includes a description in the application of land use consistency with existing land use plans and zoning ordinances. If a local government makes an affirmative determination that the site and or facilities are consistent with local land use, but a substantially affected individual disputes the local government's determination, that person has 15 days to file a petition disputing the determination.

If it is determined by the local government that the proposed site, or directly associated facility, does conform with existing land use plans and zoning ordinances, in effect as of the date of the application, and no petition has been filed, the responsible zoning or planning authority shall not change the land use plans or zoning ordinances, in order to foreclose construction and operation of the proposed site, or directly associated facilities, unless certification is subsequently denied or withdrawn.



Section 27: Determination of Sufficiency: Section 403.5067, F.S., is repealed. This review is combined with the completeness review.

Section 28: Preliminary statement of issues, reports, project analyses, and studies: The bill amends s. 403.507, F.S., relating to preliminary statements of issues, reports, project analyses, and studies. It changes the date for the filing of preliminary statements of issues from 60 days after distribution of the application, to 40 days after the application has been determined complete. It now requires agency reports to be filed 100 days after the application has been determined complete, expediting the review process by approximately 32 days.

The bill also clarifies that the Department of Community Affairs shall address emergency management in its report, and water management district reports shall include issues related to impact on water resources, impact on regional water supply planning, and impact on district-owned lands and works.

The Department of Transportation (DOT) is added to the list of agencies that must address the impact of the proposed plant on matters within its jurisdiction. DOT is typically involved in the certification process, but its statutory addition as a reporting agency ties in with its addition to the list of parties to the proceeding. It also establishes DOT as an agency eligible for reimbursement from the application fee.

The bill deletes the provisions related to the PSC filing of its determination and relocates it to a separate section. Additionally, prior to DEP issuing its project analysis; the PSC must have made an affirmative determination of need. While the need determination is currently required prior to the certification hearing, this language is amended to provide for instances when a hearing may be canceled.

Section 29: Land use and certification hearings: The bill amends s. 403.508, F.S., relating to land use and certification hearings. The bill addresses both types of hearings:

(1) Land use hearing: provides that if a petition is filed for a land use hearing relating to the proposed site or directly associated facility the ALJ as expeditiously as possible, but no later than 30 days after DEP's receipt of the petition shall conduct the hearing. The land use hearing is to be held whether or not the application is complete. However, incompleteness of information may be used by the local government in making its determination on consistency with land use. If in the recommended order, the ALJ finds a site inconsistent with local land use and zoning requirements, the bill outlines the procedure that follows such situations. Additionally, it clarifies that local land use plans and zoning ordinances may be preempted by the siting board. The bill further readjusts processing time in order to conform to responses to determination of incompleteness. However, this does not impact the overall issuance of the final certification.

(2) Certification hearing: changes the date for the holding of the certification hearing to from 300 to 265 days after the filing of the application. The DEP analysis would have been filed approximately 95 days earlier. Moreover, according to DEP, this length of time is needed to account for the possibility of an application being incomplete as filed, but it was rendered complete before the deadline for the tolling of the time clock. This provision also provides adequate time to prepare for the hearing.

A key substantive change is the addition of a mechanism for the cancellation of the otherwise mandatory certification hearing. If there are no disputed issues of fact or law, no later than 29 days before the certification hearing, but with enough time to provide three days notice of canceling the hearing, DEP or the applicant may request that the certification hearing be canceled. The ALJ, upon request, can order cancellation of the hearing for a non-controversial project upon stipulation by all parties. The ALJ would relinquish jurisdiction, and DEP would prepare the Final Order. This new option would shorten the process by as much as four and a half months, and would save the applicant and the agencies expense.

The bill also makes numerous technical changes to this section, including the relocation of provisions to group related activities and improve the chronological sequencing of events. Additionally, DOT is added to the list of parties, and process deadlines are revised to conform to other deadline changes. The language regarding "public notice" has been relocated to a new notice section pertaining to the entire process, as opposed to just the hearing proceeding.

The bill also conforms existing provisions related to the conduct of the hearing, parties, and intervention, and retains existing provisions related to public participation and public hearings, though relevant dates are changed to conform to changes in the dates of the overall process.

Section 30: Final Disposition of the Application: The bill amends s. 403.509, F.S., relating to the final disposition of application. The bill adds a provision allowing DEP to issue the final order on certification, if the ALJ has cancelled the certification hearing. This would only apply if there are no controversial issues, and could save several months.

The bill requires the applicant to seek before, during or after, the certification any necessary land easements for state lands from the Board of Trustees or relevant water management district. The certification may be made contingent on the applicant receiving the appropriate interest.

This section also creates criteria for approval or denial of the application, which is drawn from the intent language, and criteria listed elsewhere in the act. In order to make the act internally consistent regarding federally delegated/approved permits, provisions related to these permits are deleted.

Section 31: Effect of Certification: The bill amends s. 403.511, F.S., relating to the effect of certification. The bill deletes language to conform to the provisions that allow the Secretary of DEP to sign certifications, under certain circumstances. Language is added to this section to clarify that local land use permits and zoning ordinances are preempted by the PPSA. This section further clarifies that federal permits are to be issued under their own program guidelines and not those of the Siting Board or PPSA. Subsection (8) is also added to this section and reads:

(8) Pursuant to s. 380.23, electrical power plants are subject to the federal coastal consistency review program. Issuance of certification shall constitute the state's certification of coastal zone consistency.

Section 32: Filing of Notice of Certified Corridor Route: The bill creates s. 403.5112, F.S., relating to filing of notice of certified corridor route. This provision is drawn from s. 403.5312, F.S., contained in the Transmission Line Siting Act, but which technically applies to the PPSA, as well. This section provides that within 60 days after a directly associated linear facility is certified, the applicant must file notice of the certified route with DEP and the clerk of the circuit court in each county through which the corridor will pass.

The notice is to consist of maps and aerial photographs clearly showing the location of the certified route and shall state that the certification of the corridor will result in the acquisition of rights-of-way within the corridor. The clerk is to record the filing in the official record of the county for the duration of the certification, or until the applicant certifies to DEP and the clerk that all lands required for the transmission line rights-of-way within the corridor have been acquired within the county, whichever is sooner.

Section 33: Postcertification Amendments: The bill creates s. 403.5113, F.S., related to post-certification amendments. This is essentially a technical addition clarifying the difference in required actions between amendments submitted by the applicant during the application review, and those submitted after certification. These changes codify and clarify existing DEP rules, and provide regulatory certainty for licensees.

If subsequent to certification, a licensee proposes a material change to the certification, the licensee must submit to DEP a written request for amendment and a description of the proposed change to the application. DEP has 30 days to determine whether or not the proposed change requires the conditions of certification to be modified. If DEP concludes that the change would not require a modification of the conditions of certification, DEP must provide written notification of the approval of the proposed amendment to the licensee, all agencies, and all other parties.

If DEP concludes that the change would require a modification of the conditions of certification, DEP sends written notification to the licensee stating that the proposed changes require a request for modification.

Section 34: Public Notice; Costs of Proceeding: The bill amends s. 403.5115 F.S., relating to public notice. This language in this section conforms to requirements to other provisions, updates methods for notification to allow for notice as specified in ch. 120, F.S., and makes clarifications. The applicant is responsible for publishing and paying for the notices in newspapers of general circulation relating to its filings with DEP, hearings, the cancellation of hearings, modifications, and supplemental applications.

DEP is required to provide the notices in the manner specified by ch. 120, F.S., and provide copies to persons who have been placed on its mailing list pertaining to various filings and hearing, the cancellation of hearings and any notice of stipulations, proposed agency actions and petitions for modification.

Section 35: Review: The bill amends the judicial review provisions in s. 403.513, F.S. to conform its requirements to other provisions. The bill clarifies that when possible, separate appeals of the certification order and any DEP permit issued pursuant to a federally delegated or approved permit program may be consolidated for purposes of judicial review.

Section 36: Modification of Certification: Modifications of certification are frequently necessary, in part because a life-of-the-facility license was granted. However, not all changes at a certified facility necessitate a formal modification, rather, an approved amendment may suffice. A "modification" is any change in the certification order after issuance, including a change in the conditions of certification. For example, a condition might specify that the chemical treatment system for the facility only be allowed a 30 foot mixing zone, and if the applicant wishes to have a 40 foot mixing zone, a modification would be necessary. However, if a construction shed was to be moved and this was not mentioned in the conditions nor are there any foreseeable impacts, an amendment would be approved.

According to DEP, modifications can be approved by the Siting Board, but this authority is most frequently delegated to the Secretary of DEP. However, if a dispute arises, the decision-making authority reverts to the Siting Board.

The bill amends s. 403.516, F.S., relating to the modification of certification. This section makes edits to clarify and streamline unclear provisions related to modification of certifications. Additionally, it conforms requirements to other provisions regarding federally delegated or approved permits.

Section 37: Supplemental Applications for Sites Certified for Ultimate Site Capacity: The bill amends s. 403.517, F.S., relating to supplemental applications certified for ultimate site capacity. These applications are for certification of the construction of electrical power plants to be located at sites which have been previously certified for ultimate site capacity. Supplemental applications are limited to electrical power plants using a fuel type previously certified for the site.

This section is amended to add that these applications include all new directly associated facilities that support the construction and operation of the electrical power plant. The bill also simplifies and clarifies language regarding procedural steps for applications at facilities that have previously been certified, but

are expanding. Additionally, the definition of "ultimate site capacity" was deleted and transferred to the definitions section.

Section 38: Existing Electrical Power Plant Site Certification: The bill amends s. 403.5175, F.S., relating to existing electrical power plant site certification to make technical edits conforming this section to other sections of the PPSA.

Section 39: Disposition of Fees: For the siting of a power plant, the applicant must pay DEP a \$2,500 fee upon filing the notice of intent and a fee not to exceed \$200,000 when filing the application. In addition, there are fees associated with a certification modification, a supplemental application, and an existing site certification. Generally, sixty percent of this fee goes to DEP for its costs associated with coordinating the review, acting on the application, and covering its associated costs. Twenty percent goes to DOAH to cover its costs associated with conducting the hearing. The remaining twenty-percent may be provided to various agencies to reimburse them for their costs associated with their participation in the proceeding.

The bill amends s. 403.518, F.S., relating to the disposition of fees to take into account the potential cancellation of the certification hearing. Currently, DOAH receives 20 percent of the application fee to cover its administrative costs. Under the new provisions, DOAH would receive 5 percent up front to cover its initial administration costs. DOAH would receive an additional 5 percent if a land use hearing is held and an additional 10 percent if a certification hearing is held. If all hearings are held, DOAH will receive the 20 percent it currently receives. The bill adds a provision to allow agencies to seek reimbursement of their expenses if an application is held in abeyance for more than one year. In other words, a grandfathering exists for certain applications in the process, i.e. those requiring cancellation of certification.

DEP shall establish rules for determining a certification modification fee based on the equipment redesign, change in site size, type, increase in generating capacity proposed, or change in an associated linear facility location.

Section 40: Applicability of Revisions: The bill provides that any applicant for power plant certification under the PPSA is to be processed under the law applicable when the application was filed, except that provisions relating to the cancellation of the certification hearing, the provisions related to the final disposition of the application and issuance of the written order by the secretary of DEP, and notice of the cancellation of the certification hearing may apply to any application for power plant certification. This will have the effect of leaving the existing time frame in place for any application which is pending when the bill becomes law.

Section 41: Exclusive Forum for Determination of Need: The need determination process can occur prior to the filing of a certification application, or afterwards; however, it is usually recommended that it be commenced beforehand. Need determination is a formal process required under s. 403.519, F.S., and is conducted by the PSC. The PSC reviews the need for the generation capacity which the proposed facility would produce in relation to the needs of the region, and to the state as a whole. The PSC also looks at whether the facility would be the most cost-effective means of obtaining generating capacity. If the PSC makes a negative determination, or recommends that an alternative approach is more suitable, then either the pending application need not be submitted, or should be revised. If the application has already been submitted, then the certification application process comes to a halt.

Section 403.519(2), F.S., requires the PSC to publish notices in the newspaper of its need determination hearing 45 days before the date set for the hearing. The bill shifts this responsibility to the applicant and shortens the time frame to 21 days before the hearing. In addition, it states that the PSC shall continue to post a notice in the Florida Administrative Weekly at least seven days prior to the date of the hearing.

The bill amends s. 403.519(3), F.S., allowing the PSC to take into account the need for fuel diversity and supply reliability when making a need determination. The PSC currently includes fuel issues in its need determination proceeding, but the bill requires it to be addressed in the PSC's deliberations. The bill does

not specify if the need for fuel diversity and supply reliability refers to the state as a whole or to the specific applicant.

Section 42: Water Projects: The bill amends s. 403.885, F.S., adjusting the criteria for the water projects grant program.

Section 43: The bill provides an appropriation of \$61,379 from the General Revenue Fund to DOR to administer the Energy-Efficient Products Sales Tax Holiday.

Section 44: Effective Date: This act shall take effect upon becoming law.

#### C. SECTION DIRECTORY:

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| Section 1  | Provides legislative findings and intent.  |
| Section 2  | Creates s. 377.801, F.S., provides Short title.  |
| Section 3  | Creates s. 377.802, F.S., provides purpose.  |
| Section 4  | Creates s. 377.803, F.S., provides definitions.  |
| Section 5  | Creates s. 377.804, F.S., Renewable Energy Technologies Grant Program.   |
| Section 6  | Creates s. 377.805, F.S., Energy-Efficient Products Sales Tax Holiday.   |
| Section 7  | Creates s. 377.806, F.S., Solar Energy Systems Rebate Program.   |
| Section 8  | Creates s. 377.901, F.S., Florida Energy Council.  |
| Section 9  | Creates s. 212.08(7)(ccc), F.S., sales tax exemption for equipment, machinery and other renewable energy technologies. |
| Section 10 | Adds s. 213.053(7)(y), F.S., relating to confidentiality and information sharing.                                      |
| Section 11 | Amends s. 220.02(8), F.S., relating to tax credits against corporate income tax or franchise tax.                      |
| Section 12 | Creates s. 220.192, F.S., Renewable energy technologies investment tax credit.   |
| Section 13 | Amends s. 220.13, F.S., relating to definition of "adjusted federal income."   |
| Section 14 | Amends s. 186.801(2), F.S., relating to ten-year site plan.  |
| Section 15 | Amends s. 366.04(6), F.S., relating to jurisdiction of the Public Service Commission.                                  |
| Section 16 | Amends s. 366.05(1) and (8), F.S., related to powers of the Public Service Commission.                                 |
| Section 17 | Requires the Public Service Commission to direct a study.  |
| Section 18 | Amends s. 403.503, F.S., provides definitions for the Florida Electrical Power Plant Siting Act.                       |
| Section 19 | Amends s. 403.504, F.S., relating to powers and duties of the Department of Environmental Protection.                  |

- Section 20 Amends s. 403.5505, F.S., relation to applications for permits pursuant to s. 403.0885, F.S. (Establishment of federally approved state National Pollutant Discharge Elimination System (NPDES) Program).
- Section 21 Amends s. 403.506, F.S., relating to applicability, thresholds, and certification.
- Section 22 Amends s. 403.5064, F.S., relating to distribution of certification application and related schedule.
- Section 23 Amends s. 403.5065, F.S., relating to appointment, powers, and duties of an administrative law judge.
- Section 24 Amends s. 403.5066, F.S., relating to determination of completeness.
- Section 25 Creates s. 403.50663, F.S., relating to informational public meetings.
- Section 26 Creates s. 403.50665, F.S., relating to land use consistency determination.
- Section 27 Repeals s. 403.5067, F.S., determination of sufficiency.
- Section 28 Amends s. 403.507, F.S., preliminary statement of issues, reports, project analyses, and studies.
- Section 29 Amends s. 403.508, F.S., relating to land use and certification hearings.
- Section 30 Amends s. 403.509, F.S., relating to final disposition of the application.
- Section 31 Amends s. 403.511, F.S., relating to effect of certification.
- Section 32 Creates s. 403.5112, F.S., relating to filing of notice of certified corridor route.
- Section 33 Creates s. 403.5113, F.S., relating to post certification amendments.
- Section 34 Amends s. 403.5115, F.S., relating to public notice and costs of proceeding.
- Section 35 Amends s. 403.513, F.S., relating to judicial review.
- Section 36 Amends s. 403.516, F.S., relating to modification of certification.
- Section 37 Amends s. 403.517, F.S., relating to supplemental applications for sites certified for ultimate site capacity.
- Section 38 Amends s. 403.5175, F.S., relating to electrical power plant site certifications.
- Section 39 Amends s. 403.518, F.S., relating to fees and disposition.
- Section 40 Provides for the applicability of revisions to the Power Plant Siting Act.
- Section 41 Amends s. 403.519, F.S., relating to determination of need.
- Section 42 Amends s. 403.885, F.S., relating to water projects grant criteria.
- Section 43 Provides an appropriation to administer the Energy-Efficient Products Sales Tax Holiday.
- Section 44 Provides for an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The Revenue Estimating Conference has estimated that the provisions of this bill relating to the Energy-Efficient Products Sales Tax Holiday, the sales tax exemptions for renewable energy technologies, and the corporate income tax credits, will have the following negative fiscal impact on state government:

	<u>2006-07</u>	<u>2007-08</u>
General Revenue	(\$11.0m)	(\$14.3m)
State Trust	(Insignificant)	(Insignificant)
Total	<u>(\$11.0m)</u>	<u>(\$14.3m)</u>

#### 2. Expenditures:

##### *Renewable Energy Technologies Grant Program*

According to DEP, there will be recurring costs associated with administering the programs provided for under the act. At this time, the Energy Office staff time is paid through a grant from the United States Department of Energy and administering grant programs would be an allowable cost under the federal grant. However, the additional workload may create a need for hiring additional staff.

##### *Solar Energy System Incentives Program*

The fiscal impact of the Solar Energy System Incentives Program is indeterminate at this time. The availability of the rebates is subject to the amount appropriated to the program each fiscal year. DEP will incur some expenses associated with administering this program.

##### *Florida Energy Council*

The Energy Council may incur costs associated with conducting its duties, and DEP may incur administrative costs associated with staffing the council. There is no appropriation for these expenses.

##### *Sales Tax Exemption and Corporate Income Tax Credit Administration*

According to DEP, it will either administer the tax incentive program or contract with an outside organization to do so. The costs associated with this incentive are recurring in nature. The Energy Office staff is paid through a grant from the U.S. Department of Energy and administration of a tax incentive program for biofuels and hydrogen would be allowable under the federal grant. However, the additional workload may create a need for hiring additional staff.

According to DOR, it will need one additional position at a recurring cost of \$48,708 to administer these programs. For the 2006-2007 fiscal year, DOR expects to incur \$4,834 in non-recurring expenses.

##### *Public Service Commission*

According to PSC, it may see an increased workload as a result of the additional authority monitoring system reliability as it relates to fuel diversity. The PSC will also incur costs related to the study it is required to direct.

##### *Power Plant Siting Act*

For the siting of a power plant, an applicant must pay DEP a \$2,500 fee upon filing the notice of intent, and a fee not to exceed \$200,000 when filing the application. In addition, there are fees

associated with a certification modification, a supplemental application, and an existing site certification. Generally, sixty percent of the fees are allocated to DEP to cover its review, the processing of the application, and other associated costs.

Twenty percent of the fees are allocated to DOAH to cover its administrative costs associated with conducting the hearing. However, under this bill, DOAH will receive 5 percent up front to cover its initial administration costs, an additional 5 percent if a land use hearing is held, and an additional 10 percent if a certification hearing is held. If all hearings are held, DOAH will be allocated the 20 percent it currently receives.

The remaining twenty percent may be provided to various agencies to reimburse them for their costs associated with their participation in a PPSA proceeding.

The bill adds a provision to allow agencies to seek reimbursement of their expenses if an application is held in abeyance for more than one year.

#### *Other Costs*

DEP and DOR will incur expenses associated with the rulemaking requirements. In addition, DEP and the PSC may incur expenses associated with revising their current rules to conform to the statutory changes.

DEP, DOR, and the PSC will also incur some costs implementing various portions of the bill and administering various programs. Among these costs are those that will be incurred by DOR to administer the Energy-Efficient Products Sales Tax Holiday. However, all of these costs are indeterminate at this time.

The cost of the grant program is limited to the amount appropriated each year.

## **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

### **1. Revenues:**

The Revenue Estimating Conference has estimated that the provisions of this bill relating to the Energy-Efficient Products Sales Tax Holiday, and the sales tax exemptions for renewable energy technologies will have the following negative fiscal impact on local governments:

	<u>2006-07</u>	<u>2007-08</u>
Revenue Sharing	(\$0.2m)	(\$0.1m)
Local Gov't. Half Cent	(\$0.5m)	(\$0.3m)
Local Option	(\$0.5m)	(\$0.3m)
Total Local Impact	<u>(\$1.2m)</u>	<u>(\$0.7m)</u>

Local governments would be eligible to receive grants under the Renewable Energy Technologies Grant Program.

### **2. Expenditures:**

In the long-run, local governments may save funds as a result of canceling the certification hearing under the PPSA; however, local governments may also incur expenses related to holding informational public meetings.

## **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**



The tax exemptions and tax credits included in this bill will reduce the private sector's tax burden on certain items used for the production of renewable energy technologies.

Persons that purchase the solar energy items covered by this bill will benefit by receiving a rebate. Also, persons that purchase the items covered by this bill during Energy Efficiency Week may save money by not having to pay a sales tax. In addition, the solar rebates and the Energy-Efficient Products Sales Tax Holiday may prompt some consumers to purchase more of the eligible items, thereby causing an increase in the number of sales by Florida retailers.

Power plant siting applicants could realize a direct economic benefit from a streamlined permitting process, including the ability to begin construction at an earlier date.

#### D. FISCAL COMMENTS:

The bill does not contain an appropriation for the expenses related to the Florida Energy Council.

HB 5001, the General Appropriations Act, contains a \$5 million General Revenue appropriation for the Solar Energy System Rebates Program. There is also an appropriation of \$15 million (\$8.6m in General Revenue and \$6.4 in Trust) for Renewable Energy Technology Grants including \$5 million (GR) for the Farm to Fuel program.

The bill provides an appropriation of \$61,379 from the General Revenue Fund to DOR to administer the Energy-Efficient Products Sales Tax Holiday.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill reduces the authority that counties have to raise revenues through local option sales taxes; however, the amount of the reduction is insignificant and an exemption applies. Accordingly, the bill does not require a two-thirds vote of the membership of each house.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority in the following instances:

DEP may adopt rules:

- a. to administer the Renewable Energy Technologies Grant Program.
- b. to designate rebate amounts and administer the issuance of Solar Energy Systems Incentive Program.
- c. to implement provisions related to the Florida Energy Council.
- d. to implement guidelines, rules, and application materials for the Renewable Energy Technologies Investment Tax Credit.
- e. to ensure sales tax exemptions do not exceed the provided limits, regularly publish the amount of sales tax remaining in each fiscal year.

- f. to determine the appropriate fee for a certificate modification under the Florida Electric Power Plant Siting Act.
- g. to amend its power plant siting rules to conform to change to the Florida Electric Power Plant Siting Act.
- h. to include "construction" as a component to be included in rules for environmental precautions in relation to the PPSA.

DOR is required to adopt rules regarding the manner and form of sales tax refund applications and may establish guidelines for an affirmative showing of qualification for exemptions. Also, DOR has the authority to adopt rules relating to forms required to claim the Renewable Energy Technologies Investment Tax Credit, the requirements and basis for establishing an entitlement to a credit, and examination and audit procedures required to administer the credit.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### Drafting Issues

On line 279, the bill provides that during the sales tax holiday, the tax levied under ch. 212, F.S., may not, be levied. This language is permissive. In order to provide that the tax cannot be levied, this language should be changed to shall not.

On lines 468 through 473, the bill provides a sales tax exemption for materials used in the distribution of ethanol from E10 to E85; however, the exemption for gasoline fueling station pump retrofits for ethanol applies from E10 through E100. This is a consistency concern.

##### Other Comments

The PSC may need rulemaking authority to amend some of its current rules to conform to provisions contained in this bill.

According to the PSC, the January 30, 2007 deadline to perform all the study components may be difficult to achieve. Even with the bill taking effect upon becoming law, the PSC will only have seven to eight months to perform the required study and get the report approved by the Commissioners. The PSC is currently working with the Florida Reliability Coordinating Council (FRCC) on a new transmission planning process, and this involvement may enhance the proposed study on Florida's electric transmission grid. The purpose of the new FRCC transmission planning process is to increase coordination among the FRCC members in an effort to improve the overall transmission planning and to provide a better transmission expansion plan from a statewide perspective. The utilities will file their first reports utilizing this new planning process in this month (April 2006). Additionally, the PSC has opened a docket proposing rules governing the placement of new electric distribution facilities underground and conversion of existing overhead distribution facilities to underground, to address the effects of extreme weather events.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Utilities & Telecommunications adopted a strike-all amendment and nine amendments to the strike-all. These amendments provided the following:

##### A) Renewable Energy and Energy Efficiency Act:

1. Amends definition of "renewable energy resource" to more clearly specify targeted resources.
2. Modifies grant program language to clarify criteria and DEP duties.
3. Removes the energy-efficient appliance rebate program and creates the new Energy-Efficient Products Sales Tax Holiday.

4. Revises language to incorporate concepts into the existing solar energy rebate program, including providing incentives for solar pool heaters, setting rebate amounts, establishing eligibility criteria, and setting rebate caps.

B) Florida Energy Council

1. Adds the Commissioner of Agriculture and Consumer Services to the membership of the council.
2. Adds that the Secretary of DEP, the Chair of the PSC, and the Commissioner of DACS may appoint a designee.
3. Adds that the Council's recommendations shall be guided by the principles of reliability, efficiency, affordability, and diversity.

C) Tax Incentives

1. Amends definitions of "Biodiesel" and "Ethanol" to reflect more accepted definitions of those terms, and revises related concepts to clarify what is eligible for tax incentives.
2. Makes technical corrections for proper operation of the tax programs.

D) Public Service Commission

1. Clarifies the PSC is to direct a broad study all forms of system hardening.

E) Power Plant Siting Act

1. Clarifies definitions.
2. Clarifies the interaction with federal permit programs.
3. Amends the applicability section to exempt cogeneration facilities which are expanding by less than 35 megawatts.
4. Changes the section on completeness to give the applicant 30 days, rather than 15, to respond to a notice of incompleteness. Other formatting changes were made to make this section clearer.
5. Streamlines the process on the determination of consistency with land use to ensure that the applicant files the necessary information, and that the local government's abilities in issuing a statement of inconsistency are protected.

On April 21, 2006, the Fiscal Council passed HB 1473 CS with four amendments that made the following revisions to the bill:

- Limited the "Energy-Efficient Products Sales Tax Holiday" to one year;
- Clarified that the sales tax exemption is for new energy-efficient products;
- Provided that eligible products are limited to those that qualify for the Energy Star Programs;
- Provided that purchases may not be made using a business or company credit or debit card or check;
- Provided penalties for businesses that buy products tax-free;
- Provided adjustments to the water projects grant criteria; and
- Provided an appropriation of \$61,379 from the General Revenue Fund to the Department of Revenue to administer the Energy-Efficient Products Sales Tax Holiday.

The bill was then reported favorably with a committee substitute, and this analysis reflects the changes contained in the amendments adopted by the Fiscal Council.

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CHAMBER ACTION

The Fiscal Council recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to energy; providing legislative findings and intent; creating s. 377.801, F.S.; creating the "Florida Renewable Energy Technologies and Energy Efficiency Act"; creating s. 377.802, F.S.; stating the purpose of the act; creating s. 377.803, F.S.; providing definitions; creating s. 377.804, F.S.; creating the Renewable Energy Technologies Grants Program; providing program requirements and procedures, including matching funds; requiring the Department of Environmental Protection to adopt rules and coordinate with the Department of Agriculture and Consumer Services; requiring joint departmental approval for the funding of any project; creating s. 377.805, F.S.; establishing an energy-efficient products sales tax holiday; specifying a period during which the sale of energy-efficient products is exempt from certain tax; providing a limitation; providing a definition; prohibiting purchase of products

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24       by certain payment methods; providing that certain  
25       purchases or attempts to purchase are unfair methods of  
26       competition and punishable as such; creating s. 377.806,  
27       F.S.; creating the Solar Energy System Incentives Program;  
28       providing program requirements, procedures, and  
29       limitations; requiring the Department of Environmental  
30       Protection to adopt rules; creating s. 377.901, F.S.;  
31       creating the Florida Energy Council within the Department  
32       of Environmental Protection; providing purpose and  
33       composition; providing for appointment of members and  
34       terms; providing for reimbursement for travel expenses and  
35       per diem; requiring the department to provide certain  
36       services to the council; providing rulemaking authority;  
37       amending s. 212.08, F.S.; providing definitions for the  
38       terms "biodiesel," "ethanol," and "hydrogen fuel cells";  
39       providing tax exemptions in the form of a rebate for the  
40       sale or use of certain equipment, machinery, and other  
41       materials for renewable energy technologies; providing  
42       eligibility requirements and tax credit limits; directing  
43       the Department of Revenue to adopt rules; directing the  
44       Department of Environmental Protection to determine and  
45       publish certain information relating to such exemptions;  
46       providing for expiration of the exemption; amending s.  
47       213.053, F.S.; authorizing the Department of Revenue to  
48       share certain information with the Department of  
49       Environmental Protection for specified purposes; amending  
50       s. 220.02, F.S.; providing the order of application of the  
51       renewable energy technologies investment tax credit;

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52        creating s. 220.192, F.S.; providing definitions;  
53        establishing a corporate tax credit for certain costs  
54        related to renewable energy technologies; providing  
55        eligibility requirements and credit limits; providing  
56        certain authority to the Department of Environmental  
57        Protection and the Department of Revenue; directing the  
58        Department of Environmental Protection to determine and  
59        publish certain information; providing for expiration of  
60        the tax credit; amending s. 220.13, F.S.; providing an  
61        addition to the definition of "adjusted federal income";  
62        amending s. 186.801, F.S.; revising the provisions of  
63        electric utility 10-year site plans to include the effect  
64        on fuel diversity; amending s. 366.04, F.S.; revising the  
65        safety standards for public utilities; amending s. 366.05,  
66        F.S.; authorizing the Public Service Commission to adopt  
67        certain construction standards and make certain  
68        determinations; directing the commission to conduct a  
69        study and provide a report by a certain date; amending s.  
70        403.503, F.S.; revising and providing definitions  
71        applicable to the Florida Electrical Power Plant Siting  
72        Act; amending s. 403.504, F.S.; providing the Department  
73        of Environmental Protection with additional powers and  
74        duties relating to the Florida Electrical Power Plant  
75        Siting Act; amending s. 403.5055, F.S.; revising  
76        provisions for certain permits associated with  
77        applications for electrical power plant certification;  
78        amending s. 403.506, F.S.; revising provisions relating to  
79        applicability and certification of certain power plants;

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80        amending s. 403.5064, F.S.; revising provisions for  
81        distribution of applications and schedules relating to  
82        certification; amending s. 403.5065, F.S.; revising  
83        provisions relating to the appointment of administrative  
84        law judges and specifying their powers and duties;  
85        amending s. 403.5066, F.S.; revising provisions relating  
86        to the determination of completeness for certain  
87        applications; creating s. 403.50663, F.S.; authorizing  
88        certain local governments and regional planning councils  
89        to hold an informational public meeting about a proposed  
90        electrical power plant or associated facilities; providing  
91        requirements and procedures therefor; creating s.  
92        403.50665, F.S.; requiring local governments to file  
93        certain land use determinations; providing requirements  
94        and procedures therefor; repealing s. 403.5067, F.S.,  
95        relating to the determination of sufficiency for certain  
96        applications; amending s. 403.507, F.S.; revising required  
97        preliminary statement provisions for affected agencies;  
98        requiring a report as a condition precedent to the project  
99        analysis and certification hearing; amending s. 403.508,  
100       F.S.; revising provisions relating to land use and  
101       certification hearings, including cancellation and  
102       responsibility for payment of expenses and costs;  
103       requiring certain notice; amending s. 403.509, F.S.;  
104       revising provisions relating to the final disposition of  
105       certain applications; providing requirements and  
106       provisions with respect thereto; amending s. 403.511,  
107       F.S.; revising provisions relating to the effect of

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108 certification for the construction and operation of  
 109 proposed electrical power plants; providing that issuance  
 110 of certification meets certain coastal zone consistency  
 111 requirements; creating s. 403.5112, F.S.; requiring filing  
 112 of notice for certified corridor routes; providing  
 113 requirements and procedures with respect thereto; creating  
 114 s. 403.5113, F.S.; authorizing postcertification  
 115 amendments for power plant site certification  
 116 applications; providing requirements and procedures with  
 117 respect thereto; amending s. 403.5115, F.S.; requiring  
 118 certain public notice for activities relating to  
 119 electrical power plant site application, certification,  
 120 and land use determination; providing requirements and  
 121 procedures with respect thereto; directing the Department  
 122 of Environmental Protection to maintain certain lists and  
 123 provide copies of certain publications; amending s.  
 124 403.513, F.S.; revising provisions for judicial review of  
 125 appeals relating to electrical power plant site  
 126 certification; amending s. 403.516, F.S.; revising  
 127 provisions relating to modification of certification for  
 128 electrical power plant sites; amending s. 403.517, F.S.;  
 129 revising provisions relating to supplemental applications  
 130 for sites certified for ultimate site capacity; amending  
 131 s. 403.5175, F.S.; revising provisions relating to  
 132 existing electrical power plant site certification;  
 133 revising the procedure for reviewing and processing  
 134 applications; requiring additional information to be  
 135 included in certain applications; amending s. 403.518,

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136        F.S.; revising the allocation of proceeds from certain  
137        fees collected; providing for reimbursement of certain  
138        expenses; directing the Department of Environmental  
139        Protection to establish rules for determination of certain  
140        fees; eliminating certain operational license fees;  
141        providing for the application, processing, approval, and  
142        cancellation of electrical power plant certification;  
143        amending s. 403.519, F.S.; directing the Public Service  
144        Commission to consider fuel diversity and reliability in  
145        certain determinations; amending 403.885, F.S.; revising  
146        provisions and requirements relating to the stormwater  
147        management, wastewater management, and water restoration  
148        grants program; providing an appropriation; providing an  
149        effective date.

150

151    Be It Enacted by the Legislature of the State of Florida:

152

153        Section 1. Legislative findings and intent.--The  
154        Legislature finds that advancing the development of renewable  
155        energy technologies and energy efficiency is important for the  
156        state's future, its energy stability, and the protection of its  
157        citizens' public health and its environment. The Legislature  
158        finds that the development of renewable energy technologies and  
159        energy efficiency in the state will help to reduce demand for  
160        foreign fuels, promote energy diversity, enhance system  
161        reliability, reduce pollution, educate the public on the promise  
162        of renewable energy technologies, and promote economic growth.  
163        The Legislature finds that there is a need to assist in the

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164 development of market demand that will advance the  
165 commercialization and widespread application of renewable energy  
166 technologies. The Legislature further finds that the state is  
167 ideally positioned to stimulate economic development through  
168 such renewable energy technologies due to its ongoing and  
169 successful research and development track record in these areas,  
170 an abundance of natural and renewable energy sources, an ability  
171 to attract significant federal research and development funds,  
172 and the need to find and secure renewable energy technologies  
173 for the benefit of its citizens, visitors, and environment.

174 Section 2. Section 377.801, Florida Statutes, is created  
175 to read:

176 377.801 Short title.--Sections 377.801-377.806 may be  
177 cited as the "Florida Renewable Energy Technologies and Energy  
178 Efficiency Act."

179 Section 3. Section 377.802, Florida Statutes, is created  
180 to read:

181 377.802 Purpose.--This act is intended to provide matching  
182 grants to stimulate capital investment in the state and to  
183 enhance the market for and promote the statewide utilization of  
184 renewable energy technologies. The targeted grants program is  
185 designed to advance the already growing establishment of  
186 renewable energy technologies in the state and encourage the use  
187 of other incentives such as tax exemptions and regulatory  
188 certainty to attract additional renewable energy technology  
189 producers, developers, and users to the state. This act is also  
190 intended to provide incentives for the purchase of energy-

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191   efficient appliances and rebates for solar energy equipment  
192   installations for residential and commercial buildings.

193       Section 4.   Section 377.803, Florida Statutes, is created  
194   to read:

195       377.803   Definitions.--As used in ss. 377.801-377.806, the  
196   term:

197       (1)   "Act" means the Florida Renewable Energy Technologies  
198   and Energy Efficiency Act.

199       (2)   "Approved metering equipment" means a device capable  
200   of measuring the energy output of a solar thermal system that  
201   has been approved by the commission.

202       (3)   "Commission" means the Florida Public Service  
203   Commission.

204       (4)   "Department" means the Department of Environmental  
205   Protection.

206       (5)   "Person" means an individual, partnership, joint  
207   venture, private or public corporation, association, firm,  
208   public service company, or any other public or private entity.

209       (6)   "Renewable energy" means electrical, mechanical, or  
210   thermal energy produced from a method that uses one or more of  
211   the following fuels or energy sources: hydrogen, biomass, solar  
212   energy, geothermal energy, wind energy, ocean energy, waste  
213   heat, or hydroelectric power.

214       (7)   "Renewable energy technology" means any technology  
215   that generates or utilizes a renewable energy resource.

216       (8)   "Solar energy system" means equipment that provides  
217   for the collection and use of incident solar energy for water  
218   heating, space heating or cooling, or other applications that

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require a conventional source of energy such as petroleum products, natural gas, or electricity that performs primarily with solar energy. In other systems in which solar energy is used in a supplemental way, only those components that collect and transfer solar energy shall be included in this definition.

(9) "Solar photovoltaic system" means a device that converts incident sunlight into electrical current.

(10) "Solar thermal system" means a device that traps heat from incident sunlight in order to heat water.

Section 5. Section 377.804, Florida Statutes, is created to read:

377.804 Renewable Energy Technologies Grants Program.--

(1) The Renewable Energy Technologies Grants Program is established within the department to provide renewable energy matching grants for demonstration, commercialization, research, and development projects relating to renewable energy technologies.

(2) Matching grants for renewable energy technology demonstration, commercialization, research, and development projects may be made to any of the following:

(a) Municipalities and county governments.

(b) Established for-profit companies licensed to do business in the state.

(c) Universities and colleges in the state.

(d) Utilities located and operating within the state.

(e) Not-for-profit organizations.

(f) Other qualified persons, as determined by the department.

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(3) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to provide for application requirements, provide for ranking of applications, and administer the awarding of grants under this program.

(4) Factors the department shall consider in awarding grants include, but are not limited to:

(a) The availability of matching funds or other in-kind contributions applied to the total project from an applicant. The department shall give greater preference to projects that provide such matching funds or other in-kind contributions.

(b) The degree to which the project stimulates in-state capital investment and economic development in metropolitan and rural areas, including the creation of jobs and the future development of a commercial market for renewable energy technologies.

(c) The extent to which the proposed project has been demonstrated to be technically feasible based on pilot project demonstrations, laboratory testing, scientific modeling, or engineering or chemical theory that supports the proposal.

(d) The degree to which the project incorporates an innovative new technology or an innovative application of an existing technology.

(e) The degree to which a project generates thermal, mechanical, or electrical energy by means of a renewable energy resource that has substantial long-term production potential.

(f) The degree to which a project demonstrates efficient use of energy and material resources.

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(g) The degree to which the project fosters overall understanding and appreciation of renewable energy technologies.

(h) The ability to administer a complete project.

(i) Project duration and timeline for expenditures.

(j) The geographic area in which the project is to be conducted in relation to other projects.

(k) The degree of public visibility and interaction.

(5) The department shall solicit the expertise of other state agencies in evaluating project proposals. State agencies shall cooperate with the Department of Environmental Protection and provide such assistance as required.

(6) The department shall coordinate and actively consult with the Department of Agriculture and Consumer Services during the review and approval process of grants relating to bioenergy projects for renewable energy technology, and the departments shall jointly determine the grant awards to these bioenergy projects. No grant funding shall be awarded to any bioenergy project without such joint approval. Factors for consideration in awarding grants may include, but are not limited to, the degree to which:

(a) The project stimulates in-state capital investment and economic development in metropolitan and rural areas, including the creation of jobs and the future development of a commercial market for bioenergy.

(b) The project produces bioenergy from Florida-grown crops or biomass.

(c) The project demonstrates efficient use of energy and material resources.

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(d) The project fosters overall understanding and appreciation of bioenergy technologies.

(e) Matching funds and in-kind contributions from an applicant are available.

(f) The project duration and the timeline for expenditures are acceptable.

(g) The project has a reasonable assurance of enhancing the value of agricultural products or will expand agribusiness in the state.

(h) Preliminary market and feasibility research has been conducted by the applicant or others and shows there is a reasonable assurance of a potential market.

Section 6. Section 377.805, Florida Statutes, is created to read:

377.805 Energy-efficient products sales tax holiday.--The period from 12:01 a.m., October 5, through midnight, October 11, 2006, shall be designated "Energy Efficiency Week," and the tax levied under chapter 212 may not be collected on the sale of a new energy-efficient product having a selling price of \$1,500 or less per product during that period. This exemption applies only when the energy-efficient product is purchased for noncommercial home or personal use and does not apply when the product is purchased for trade, business, or resale. As used in this section, the term "energy-efficient product" means a dishwasher, clothes washer, air conditioner, ceiling fan, incandescent or florescent light bulb, dehumidifier, programmable thermostat, or refrigerator that has been designated by the United States Environmental Protection Agency or by the United States

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330 Department of Energy as meeting or exceeding the requirements  
331 under the Energy Star Program of either agency. Purchases made  
332 under this section may not be made using a business or company  
333 credit or debit card or check. Any construction company,  
334 building contractor, or commercial business or entity that  
335 purchases or attempts to purchase the energy-efficient products  
336 as exempt under this section commits an unfair method of  
337 competition in violation of s. 501.204, punishable as provided  
338 in s. 501.2075.

339 Section 7. Section 377.806, Florida Statutes, is created  
340 to read:

341 377.806 Solar Energy System Incentives Program.--

342 (1) PURPOSE.--The Solar Energy System Incentives Program  
343 is established within the department to provide financial  
344 incentives for the purchase and installation of solar energy  
345 systems. Any resident of the state who purchases and installs a  
346 new solar energy system of 2 kilowatts or larger for a solar  
347 photovoltaic system, a solar energy system that provides at  
348 least 50 percent of a building's hot water consumption for a  
349 solar thermal system, or a solar thermal pool heater, from July  
350 1, 2006, through June 30, 2010, is eligible for a rebate on a  
351 portion of the purchase price of that solar energy system.

352 (2) SOLAR PHOTOVOLTAIC SYSTEM INCENTIVE.--

353 (a) Eligibility requirements.--A solar photovoltaic system  
354 qualifies for a rebate if:

355 1. The system is installed by a state-licensed master  
356 electrician, electrical contractor, or solar contractor.



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357        2. The system complies with state interconnection  
358 standards as provided by the commission.

359        3. The system complies with all applicable building codes  
360 as defined by the local jurisdictional authority.

361        (b) Rebate amounts.--The rebate amount shall be set at \$4  
362 per watt based on the total wattage rating of the system. The  
363 maximum allowable rebate per solar photovoltaic system  
364 installation shall be as follows:

365            1. Twenty thousand dollars for a residence.

366            2. One hundred thousand dollars for a place of business, a  
367 publicly owned or operated facility, or a facility owned or  
368 operated by a private, not-for-profit organization, including  
369 condominiums or apartment buildings.

370        (3) SOLAR THERMAL SYSTEM INCENTIVE.--

371        (a) Eligibility requirements.--A solar thermal system  
372 qualifies for a rebate if:

373            1. The system is installed by a state-licensed solar or  
374 plumbing contractor.

375            2. The system complies with all applicable building codes  
376 as defined by the local jurisdictional authority.

377        (b) Rebate amounts.--Authorized rebates for installation  
378 of solar thermal systems shall be as follows:

379            1. Five hundred dollars for a residence.

380            2. Fifteen dollars per 1,000 Btu for a maximum of \$5,000  
381 for a place of business, a publicly owned or operated facility,  
382 or a facility owned or operated by a private, not-for-profit  
383 organization, including condominiums or apartment buildings. Btu  
384 must be verified by approved metering equipment.

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385        (4) SOLAR THERMAL POOL HEATER INCENTIVE.--  
 386        (a) Eligibility requirements.--A solar thermal pool heater  
 387 qualifies for a rebate if the system is installed by a state-  
 388 licensed solar or plumbing contractor and the system complies  
 389 with all applicable building codes as defined by the local  
 390 jurisdictional authority.  
 391        (b) Rebate amount.--Authorized rebates for installation of  
 392 solar thermal pool heaters shall be \$100 per installation.  
 393        (5) APPLICATION.--Application for a rebate must be made  
 394 within 90 days after the purchase of the solar energy equipment.  
 395        (6) REBATE AVAILABILITY.--The department shall determine  
 396 and publish on a regular basis the amount of rebate funds  
 397 remaining in each fiscal year. The total dollar amount of all  
 398 rebates issued by the department is subject to the total amount  
 399 of appropriations in any fiscal year for this program. If funds  
 400 are insufficient during the current fiscal year, any requests  
 401 for rebates received during that fiscal year may be processed  
 402 during the following fiscal year. Requests for rebates received  
 403 in a fiscal year that are processed during the following fiscal  
 404 year shall be given priority over requests for rebates received  
 405 during the following fiscal year.  
 406        (7) RULES.--The department shall adopt rules pursuant to  
 407 ss. 120.536(1) and 120.54 to develop rebate applications and  
 408 administer the issuance of rebates.  
 409        Section 8. Section 377.901, Florida Statutes, is created  
 410 to read:  
 411        377.901 Florida Energy Council.--

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(1) The Florida Energy Council is created within the Department of Environmental Protection to provide advice and counsel to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the energy policy of the state. The council shall advise the state on current and projected energy issues, including, but not limited to, transportation, generation, transmission, distributed generation, fuel supply issues, emerging technologies, efficiency, and conservation. In developing its recommendations, the council shall be guided by the principles of reliability, efficiency, affordability, and diversity.

(2)(a) The council shall be comprised of a diversity of stakeholders and may include utility providers, alternative energy providers, researchers, environmental scientists, fuel suppliers, technology manufacturers, persons representing environmental, consumer, and public health interests, and others.

(b) The council shall consist of nine voting members as follows:

1. The Secretary of Environmental Protection, or his or her designee, who shall serve as chair of the council.

2. The chair of the Public Service Commission, or his or her designee, who shall serve as vice chair of the council.

3. One member shall be the Commissioner of Agriculture, or his or her designee.

4. Two members who shall be appointed by the Governor.

5. Two members who shall be appointed by the President of the Senate.

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440        6. Two members who shall be appointed by the Speaker of  
441 the House of Representatives.

442        (c) All initial members shall be appointed prior to  
443 September 1, 2006. Appointments made by the Governor, the  
444 President of the Senate, and the Speaker of the House of  
445 Representatives shall be for terms of 2 years each. Members  
446 shall serve until their successors are appointed. Vacancies  
447 shall be filled in the manner of the original appointment for  
448 the remainder of the term that is vacated.

449        (d) Members shall serve without compensation but are  
450 entitled to reimbursement for travel expenses and per diem  
451 related to council duties and responsibilities pursuant to s.  
452 112.061.

453        (3) The department shall provide primary staff support to  
454 the council and shall ensure that council meetings are  
455 electronically recorded. Such recording shall be preserved  
456 pursuant to chapters 119 and 257.

457        (4) The department may adopt rules pursuant to ss.  
458 120.536(1) and 120.54 to implement the provisions of this  
459 section.

460        Section 9. Paragraph (ccc) is added to subsection (7) of  
461 section 212.08, Florida Statutes, to read:

462        212.08 Sales, rental, use, consumption, distribution, and  
463 storage tax; specified exemptions.--The sale at retail, the  
464 rental, the use, the consumption, the distribution, and the  
465 storage to be used or consumed in this state of the following  
466 are hereby specifically exempt from the tax imposed by this  
467 chapter.

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468           (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any  
469 entity by this chapter do not inure to any transaction that is  
470 otherwise taxable under this chapter when payment is made by a  
471 representative or employee of the entity by any means,  
472 including, but not limited to, cash, check, or credit card, even  
473 when that representative or employee is subsequently reimbursed  
474 by the entity. In addition, exemptions provided to any entity by  
475 this subsection do not inure to any transaction that is  
476 otherwise taxable under this chapter unless the entity has  
477 obtained a sales tax exemption certificate from the department  
478 or the entity obtains or provides other documentation as  
479 required by the department. Eligible purchases or leases made  
480 with such a certificate must be in strict compliance with this  
481 subsection and departmental rules, and any person who makes an  
482 exempt purchase with a certificate that is not in strict  
483 compliance with this subsection and the rules is liable for and  
484 shall pay the tax. The department may adopt rules to administer  
485 this subsection.

486           (ccc) Equipment, machinery, and other materials for  
487 renewable energy technologies.--

488           1. As used in this paragraph, the term:

489           a. "Biodiesel" means the mono-alkyl esters of long-chain  
490 fatty acids derived from plant or animal matter for use as a  
491 source of energy and meeting the specifications for biodiesel  
492 and biodiesel blends with petroleum products as adopted by the  
493 Department of Agriculture and Consumer Services. Biodiesel may  
494 refer to biodiesel blends designated BXX, where XX represents  
495 the volume percentage of biodiesel fuel in the blend.

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496        b. "Ethanol" means nominally anhydrous denatured alcohol  
497 produced by the fermentation of plant sugars meeting the  
498 specifications for fuel ethanol and fuel ethanol blends with  
499 petroleum products as adopted by the Department of Agriculture  
500 and Consumer Services. Ethanol may refer to fuel ethanol blends  
501 designated EXX, where XX represents the volume percentage of  
502 fuel ethanol in the blend.

503        c. "Hydrogen fuel cells" means equipment using hydrogen or  
504 a hydrogen-rich fuel in an electrochemical process to generate  
505 energy, electricity, or the transfer of heat.

506        2. The sale or use of the following in the state is exempt  
507 from the tax imposed by this chapter:

508        a. Hydrogen-powered vehicles, materials incorporated into  
509 hydrogen-powered vehicles, and hydrogen-fueling stations, up to  
510 a limit of \$2 million in taxes each state fiscal year.

511        b. Commercial stationary hydrogen fuel cells, up to a  
512 limit of \$1 million in taxes each state fiscal year.

513        c. Materials used in the distribution of biodiesel (B10-  
514 B100) and ethanol (E10-E85), including fueling infrastructure,  
515 transportation, and storage, up to a limit of \$1 million in  
516 taxes each state fiscal year. Gasoline fueling station pump  
517 retrofits for ethanol (E10-E100) distribution qualify for the  
518 exemption provided in this sub-subparagraph.

519        3. The Department of Environmental Protection shall  
520 provide to the department a list of items eligible for the  
521 exemption provided in this paragraph.

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4.a. The exemption provided in this paragraph shall be available to a purchaser only through a refund of previously paid taxes.

b. To be eligible to receive the exemption provided in this paragraph, a purchaser shall file an application with the Department of Environmental Protection. The application shall be developed by the Department of Environmental Protection, in consultation with the department, and shall require:

(I) The name and address of the person claiming the refund.

(II) A specific description of the purchase for which a refund is sought, including, when applicable, a serial number or other permanent identification number.

(III) The sales invoice or other proof of purchase showing the amount of sales tax paid, the date of purchase, and the name and address of the sales tax dealer from whom the property was purchased.

(IV) A sworn statement that the information provided is accurate and that the requirements of this paragraph have been met.

c. Within 30 days after receipt of an application, the Department of Environmental Protection shall review the application and shall notify the applicant of any deficiencies. Upon receipt of a completed application, the Department of Environmental Protection shall evaluate the application for exemption and issue a written certification that the applicant is eligible for a refund or issue a written denial of such certification within 60 days after receipt of the application.

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550 The Department of Environmental Protection shall provide the  
551 department with a copy of each certification issued upon  
552 approval of an application.

553 d. Each certified applicant shall be responsible for  
554 forwarding a certified copy of the application and copies of all  
555 required documentation to the department within 6 months after  
556 certification by the Department of Environmental Protection.

557 e. The provisions of s. 212.095 do not apply to any refund  
558 application made pursuant to this paragraph. A refund approved  
559 pursuant to this paragraph shall be made within 30 days after  
560 formal approval by the department.

561 f. The department shall adopt rules governing the manner  
562 and form of refund applications and may establish guidelines as  
563 to the requisites for an affirmative showing of qualification  
564 for exemption under this paragraph.

565 g. The Department of Environmental Protection shall be  
566 responsible for ensuring that the exemptions do not exceed the  
567 limits provided in subparagraph 2.

568 5. The Department of Environmental Protection shall  
569 determine and publish on a regular basis the amount of sales tax  
570 funds remaining in each fiscal year.

571 6. This paragraph expires July 1, 2010.

572 Section 10. Paragraph (y) is added to subsection (7) of  
573 section 213.053, Florida Statutes, to read:

574 213.053 Confidentiality and information sharing.--

575 (7) Notwithstanding any other provision of this section,  
576 the department may provide:



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577           (y) Information relative to ss. 212.08(7)(ccc) and 220.192  
578 to the Department of Environmental Protection for use in the  
579 conduct of its official business.

580

581 Disclosure of information under this subsection shall be  
582 pursuant to a written agreement between the executive director  
583 and the agency. Such agencies, governmental or nongovernmental,  
584 shall be bound by the same requirements of confidentiality as  
585 the Department of Revenue. Breach of confidentiality is a  
586 misdemeanor of the first degree, punishable as provided by s.  
587 775.082 or s. 775.083.

588           Section 11. Subsection (8) of section 220.02, Florida  
589 Statutes, is amended to read:

590           220.02 Legislative intent.--

591           (8) It is the intent of the Legislature that credits  
592 against either the corporate income tax or the franchise tax be  
593 applied in the following order: those enumerated in s. 631.828,  
594 those enumerated in s. 220.191, those enumerated in s. 220.181,  
595 those enumerated in s. 220.183, those enumerated in s. 220.182,  
596 those enumerated in s. 220.1895, those enumerated in s. 221.02,  
597 those enumerated in s. 220.184, those enumerated in s. 220.186,  
598 those enumerated in s. 220.1845, those enumerated in s. 220.19,  
599 those enumerated in s. 220.185, ~~and~~ those enumerated in s.  
600 220.187, and those enumerated in s. 220.192.

601           Section 12. Section 220.192, Florida Statutes, is created  
602 to read:

603           220.192 Renewable energy technologies investment tax  
604 credit.--

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605           (1) DEFINITIONS.--For purposes of this section, the term:

606           (a) "Biodiesel" means biodiesel as defined in s.

607           212.08 (7) (ccc) .

608           (b) "Eligible costs" means:

609           1. Seventy-five percent of all capital costs, operation  
610           and maintenance costs, and research and development costs  
611           incurred between July 1, 2006, and June 30, 2010, up to a limit  
612           of \$3 million per state fiscal year for all taxpayers, in  
613           connection with an investment in hydrogen-powered vehicles and  
614           hydrogen vehicle fueling stations in the state, including, but  
615           not limited to, the costs of constructing, installing, and  
616           equipping such technologies in the state.

617           2. Seventy-five percent of all capital costs, operation  
618           and maintenance costs, and research and development costs  
619           incurred between July 1, 2006, and June 30, 2010, up to a limit  
620           of \$1.5 million per state fiscal year for all taxpayers, and  
621           limited to a maximum of \$12,000 per fuel cell, in connection  
622           with an investment in commercial stationary hydrogen fuel cells  
623           in the state, including, but not limited to, the costs of  
624           constructing, installing, and equipping such technologies in the  
625           state.

626           3. Seventy-five percent of all capital costs, operation  
627           and maintenance costs, and research and development costs  
628           incurred between July 1, 2006, and June 30, 2010, up to a limit  
629           of \$6.5 million per state fiscal year for all taxpayers, in  
630           connection with an investment in the production, storage, and  
631           distribution of biodiesel (B10-B100) and ethanol (E10-E100) in  
632           the state, including the costs of constructing, installing, and

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633 equipping such technologies in the state. Gasoline fueling  
634 station pump retrofits for ethanol (E10-E100) distribution  
635 qualify as an eligible cost under this subparagraph.

636 (c) "Ethanol" means ethanol as defined in s.  
637 212.08 (7) (ccc) .

638 (d) "Hydrogen fuel cell" means hydrogen fuel cell as  
639 defined in s. 212.08 (7) (ccc) .

640 (2) TAX CREDIT.--For tax years beginning on or after  
641 January 1, 2007, a credit against the tax imposed by this  
642 chapter shall be granted in an amount equal to the eligible  
643 costs. Credits may be used in tax years beginning January 1,  
644 2007, and ending December 31, 2010, after which the credit shall  
645 expire. If the credit is not fully used in any one tax year  
646 because of insufficient tax liability on the part of the  
647 corporation, the unused amount may be carried forward and used  
648 in tax years beginning January 1, 2007, and ending December 31,  
649 2012, after which the credit carryover expires and may not be  
650 used. A taxpayer that files a consolidated return in this state  
651 as a member of an affiliated group under s. 220.131(1) may be  
652 allowed the credit on a consolidated return basis up to the  
653 amount of tax imposed upon the consolidated group. Any eligible  
654 cost for which a credit is claimed and which is deducted or  
655 otherwise reduces federal taxable income shall be added back in  
656 computing adjusted federal income under s. 220.13.

657 (3) APPLICATION PROCESS.--Any corporation wishing to  
658 obtain tax credits available under this section must submit to  
659 the Department of Environmental Protection an application for  
660 tax credit that includes a complete description of all eligible

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costs for which the corporation is seeking a credit and a description of the total amount of credits sought. The Department of Environmental Protection shall make a determination on the eligibility of the applicant for the credits sought and certify the determination to the applicant and the Department of Revenue. The corporation must attach the Department of Environmental Protection's certification to the tax return on which the credit is claimed. The Department of Environmental Protection shall be responsible for ensuring that the corporate income tax credits granted in each fiscal year do not exceed the limits provided for in this section. The Department of Environmental Protection is authorized to adopt the necessary rules, guidelines, and application materials for the application process.

(4) ADMINISTRATION; AUDIT AUTHORITY; RECAPTURE OF CREDITS.--

(a) In addition to its existing audit and investigation authority, the Department of Revenue may perform any additional financial and technical audits and investigations, including examining the accounts, books, and records of the tax credit applicant, that are necessary to verify the eligible costs included in the tax credit return and to ensure compliance with this section. The Department of Environmental Protection shall provide technical assistance when requested by the Department of Revenue on any technical audits or examinations performed pursuant to this section.

(b) It is grounds for forfeiture of previously claimed and received tax credits if the Department of Revenue determines, as

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689    a result of either an audit or examination or from information  
690    received from the Department of Environmental Protection, that a  
691    taxpayer received tax credits pursuant to this section to which  
692    the taxpayer was not entitled. The taxpayer is responsible for  
693    returning forfeited tax credits to the Department of Revenue,  
694    and such funds shall be paid into the General Revenue Fund of  
695    the state.

696        (c) The Department of Environmental Protection may revoke  
697    or modify any written decision granting eligibility for tax  
698    credits under this section if it is discovered that the tax  
699    credit applicant submitted any false statement, representation,  
700    or certification in any application, record, report, plan, or  
701    other document filed in an attempt to receive tax credits under  
702    this section. The Department of Environmental Protection shall  
703    immediately notify the Department of Revenue of any revoked or  
704    modified orders affecting previously granted tax credits.  
705    Additionally, the taxpayer must notify the Department of Revenue  
706    of any change in its tax credit claimed.

707        (d) The taxpayer shall file with the Department of Revenue  
708    an amended return or such other report as the Department of  
709    Revenue prescribes by rule and shall pay any required tax and  
710    interest within 60 days after the taxpayer receives notification  
711    from the Department of Environmental Protection that previously  
712    approved tax credits have been revoked or modified. If the  
713    revocation or modification order is contested, the taxpayer  
714    shall file an amended return or other report as provided in this  
715    paragraph within 60 days after a final order is issued following  
716    proceedings.

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(e) A notice of deficiency may be issued by the Department of Revenue at any time within 3 years after the taxpayer receives formal notification from the Department of Environmental Protection that previously approved tax credits have been revoked or modified. If a taxpayer fails to notify the Department of Revenue of any changes to its tax credit claimed, a notice of deficiency may be issued at any time.

(5) RULES.--The Department of Revenue shall have the authority to adopt rules relating to the forms required to claim a tax credit under this section, the requirements and basis for establishing an entitlement to a credit, and the examination and audit procedures required to administer this section.

(6) PUBLICATION.--The Department of Environmental Protection shall determine and publish on a regular basis the amount of available tax credits remaining in each fiscal year.

Section 13. Paragraph (a) of subsection (1) of section 220.13, Florida Statutes, is amended to read:

220.13 "Adjusted federal income" defined.--

(1) The term "adjusted federal income" means an amount equal to the taxpayer's taxable income as defined in subsection (2), or such taxable income of more than one taxpayer as provided in s. 220.131, for the taxable year, adjusted as follows:

(a) Additions.--There shall be added to such taxable income:

1. The amount of any tax upon or measured by income, excluding taxes based on gross receipts or revenues, paid or accrued as a liability to the District of Columbia or any state

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of the United States which is deductible from gross income in the computation of taxable income for the taxable year.

2. The amount of interest which is excluded from taxable income under s. 103(a) of the Internal Revenue Code or any other federal law, less the associated expenses disallowed in the computation of taxable income under s. 265 of the Internal Revenue Code or any other law, excluding 60 percent of any amounts included in alternative minimum taxable income, as defined in s. 55(b)(2) of the Internal Revenue Code, if the taxpayer pays tax under s. 220.11(3).

3. In the case of a regulated investment company or real estate investment trust, an amount equal to the excess of the net long-term capital gain for the taxable year over the amount of the capital gain dividends attributable to the taxable year.

4. That portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.181. The provisions of this subparagraph shall expire and be void on June 30, 2005.

5. That portion of the ad valorem school taxes paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.182. The provisions of this subparagraph shall expire and be void on June 30, 2005.

6. The amount of emergency excise tax paid or accrued as a liability to this state under chapter 221 which tax is deductible from gross income in the computation of taxable income for the taxable year.

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772 7. That portion of assessments to fund a guaranty  
773 association incurred for the taxable year which is equal to the  
774 amount of the credit allowable for the taxable year.

775 8. In the case of a nonprofit corporation which holds a  
776 pari-mutuel permit and which is exempt from federal income tax  
777 as a farmers' cooperative, an amount equal to the excess of the  
778 gross income attributable to the pari-mutuel operations over the  
779 attributable expenses for the taxable year.

780 9. The amount taken as a credit for the taxable year under  
781 s. 220.1895.

782 10. Up to nine percent of the eligible basis of any  
783 designated project which is equal to the credit allowable for  
784 the taxable year under s. 220.185.

785 11. The amount taken as a credit for the taxable year  
786 under s. 220.187.

787 12. The amount taken as a credit for the taxable year  
788 under s. 220.192.

789 Section 14. Subsection (2) of section 186.801, Florida  
790 Statutes, is amended to read:

791 186.801 Ten-year site plans.--

792 (2) Within 9 months after the receipt of the proposed  
793 plan, the commission shall make a preliminary study of such plan  
794 and classify it as "suitable" or "unsuitable." The commission  
795 may suggest alternatives to the plan. All findings of the  
796 commission shall be made available to the Department of  
797 Environmental Protection for its consideration at any subsequent  
798 electrical power plant site certification proceedings. It is  
799 recognized that 10-year site plans submitted by an electric

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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utility are tentative information for planning purposes only and may be amended at any time at the discretion of the utility upon written notification to the commission. A complete application for certification of an electrical power plant site under chapter 403, when such site is not designated in the current 10-year site plan of the applicant, shall constitute an amendment to the 10-year site plan. In its preliminary study of each 10-year site plan, the commission shall consider such plan as a planning document and shall review:

(a) The need, including the need as determined by the commission, for electrical power in the area to be served.

(b) The effect on fuel diversity within the state.

(c) ~~(b)~~ The anticipated environmental impact of each proposed electrical power plant site.

(d) ~~(e)~~ Possible alternatives to the proposed plan.

(e) ~~(d)~~ The views of appropriate local, state, and federal agencies, including the views of the appropriate water management district as to the availability of water and its recommendation as to the use by the proposed plant of salt water or fresh water for cooling purposes.

(f) ~~(e)~~ The extent to which the plan is consistent with the state comprehensive plan.

(g) ~~(f)~~ The plan with respect to the information of the state on energy availability and consumption.

Section 15. Subsection (6) of section 366.04, Florida Statutes, is amended to read:

366.04 Jurisdiction of commission.--

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827           (6) The commission shall further have exclusive  
828 jurisdiction to prescribe and enforce safety standards for  
829 transmission and distribution facilities of all public electric  
830 utilities, cooperatives organized under the Rural Electric  
831 Cooperative Law, and electric utilities owned and operated by  
832 municipalities. In adopting safety standards, the commission  
833 shall, at a minimum:

834           (a) Adopt the 1984 edition of the National Electrical  
835 Safety Code (ANSI C2) as initial standards; and

836           (b) Adopt, after review, any new edition of the National  
837 Electrical Safety Code (ANSI C2).

838

839 The standards prescribed by the current 1984 edition of the  
840 National Electrical Safety Code (ANSI C2) shall constitute  
841 acceptable and adequate requirements for the protection of the  
842 safety of the public, and compliance with the minimum  
843 requirements of that code shall constitute good engineering  
844 practice by the utilities. The administrative authority referred  
845 to in the 1984 edition of the National Electrical Safety Code is  
846 the commission. However, nothing herein shall be construed as  
847 superseding, repealing, or amending the provisions of s.  
848 403.523(1) and (10).

849           Section 16. Subsections (1) and (8) of section 366.05,  
850 Florida Statutes, are amended to read:

851           366.05 Powers.--

852           (1) In the exercise of such jurisdiction, the commission  
853 shall have power to prescribe fair and reasonable rates and  
854 charges, classifications, standards of quality and measurements,

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855    including the ability to adopt construction standards that  
856    exceed the National Electrical Safety Code for purposes of  
857    ensuring the reliable provision of service, and service rules  
858    and regulations to be observed by each public utility; to  
859    require repairs, improvements, additions, replacements, and  
860    extensions to the plant and equipment of any public utility when  
861    reasonably necessary to promote the convenience and welfare of  
862    the public and secure adequate service or facilities for those  
863    reasonably entitled thereto; to employ and fix the compensation  
864    for such examiners and technical, legal, and clerical employees  
865    as it deems necessary to carry out the provisions of this  
866    chapter; and to adopt rules pursuant to ss. 120.536(1) and  
867    120.54 to implement and enforce the provisions of this chapter.

868            (8) If the commission determines that there is probable  
869    cause to believe that inadequacies exist with respect to the  
870    energy grids developed by the electric utility industry,  
871    including inadequacies in fuel diversity or fuel supply  
872    reliability, it shall have the power, after proceedings as  
873    provided by law, and after a finding that mutual benefits will  
874    accrue to the electric utilities involved, to require  
875    installation or repair of necessary facilities, including  
876    generating plants and transmission facilities, with the costs to  
877    be distributed in proportion to the benefits received, and to  
878    take all necessary steps to ensure compliance. The electric  
879    utilities involved in any action taken or orders issued pursuant  
880    to this subsection shall have full power and authority,  
881    notwithstanding any general or special laws to the contrary, to  
882    jointly plan, finance, build, operate, or lease generating and

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transmission facilities and shall be further authorized to exercise the powers granted to corporations in chapter 361. This subsection shall not supersede or control any provision of the Florida Electrical Power Plant Siting Act, ss. 403.501-403.518.

Section 17. The Florida Public Service Commission shall direct a study of the electric transmission grid in the state. The study shall look at electric system reliability to examine the efficiency and reliability of power transfer and emergency contingency conditions. In addition, the study shall examine the strengthening of infrastructure to address issues arising from the 2004 and 2005 hurricane seasons. A report of the results of the study shall be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 30, 2007.

Section 18. Subsections (5), (8), (9), (12), (18), (24), and (27) of section 403.503, Florida Statutes, are amended, subsections (16) through (28) are renumbered as (17) through (29), respectively, and a new subsection (16) is added to that section, to read:

403.503 Definitions relating to Florida Electrical Power Plant Siting Act.--As used in this act:

(5) "Application" means the documents required by the department to be filed to initiate a certification review and evaluation, including the initial document filing, amendments, and responses to requests from the department for additional data and information ~~proceeding and shall include the documents necessary for the department to render a decision on any permit~~

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910 ~~required pursuant to any federally delegated or approved permit~~  
911 ~~program.~~

912       (8) "Completeness" means that the application has  
913 addressed all applicable sections of the prescribed application  
914 format, and ~~but does not mean~~ that those sections are sufficient  
915 in comprehensiveness of data or in quality of information  
916 provided to allow the department to determine whether the  
917 application provides the reviewing agencies adequate information  
918 to prepare the reports required by s. 403.507.

919       (9) "Corridor" means the proposed area within which an  
920 associated linear facility right-of-way is to be located. The  
921 width of the corridor proposed for certification as an  
922 associated facility, at the option of the applicant, may be the  
923 width of the right-of-way or a wider boundary, not to exceed a  
924 width of 1 mile. The area within the corridor in which a right-  
925 of-way may be located may be further restricted by a condition  
926 of certification. After all property interests required for the  
927 right-of-way have been acquired by the licensee applicant, the  
928 boundaries of the area certified shall narrow to only that land  
929 within the boundaries of the right-of-way.

930       (12) "Electrical power plant" means, for the purpose of  
931 certification, any steam or solar electrical generating facility  
932 using any process or fuel, including nuclear materials, except  
933 that this term does not include any steam or solar electrical  
934 generating facility of less than 75 megawatts in capacity unless  
935 the applicant for such a facility elects to apply for  
936 certification under this act, or any unit capacity expansion of  
937 35 megawatts or less of an existing exothermic reaction

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938 cogeneration unit that was originally built under a power plant  
 939 siting act exemption. This exemption does not apply if the unit  
 940 uses oil or natural gas for purposes other than startup. This  
 941 term and includes associated facilities to be owned by the  
 942 licensee which directly support the construction and operation  
 943 of the electrical power plant such as fuel unloading facilities,  
 944 pipelines necessary for transporting fuel for the operation of  
 945 the facility or other fuel transportation facilities, water or  
 946 wastewater transport pipelines, construction, maintenance and  
 947 access roads, railway lines necessary for transport of  
 948 construction equipment or fuel for the operation of the  
 949 facility, and those associated transmission lines owned by the  
 950 licensee which connect the electrical power plant to an existing  
 951 transmission network or rights-of-way to which the applicant  
 952 intends to connect, except that this term does not include any  
 953 steam or solar electrical generating facility of less than 75  
 954 megawatts in capacity unless the applicant for such a facility  
 955 elects to apply for certification under this act. Associated  
 956 facilities ~~An associated transmission line may include, at the~~  
 957 applicant's option, offsite associated facilities that will not  
 958 be owned by the applicant and any proposed terminal or  
 959 intermediate substations or substation expansions connected to  
 960 the associated transmission line.

961 (16) "Licensee" means an applicant that has obtained a  
 962 certification order for the subject project.

963 (19)-(18) "Nonprocedural requirements of agencies" means  
 964 any agency's regulatory requirements established by statute,  
 965 rule, ordinance, zoning ordinance, land development code, or

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966 comprehensive plan, excluding any provisions prescribing forms,  
967 fees, procedures, or time limits for the review or processing of  
968 information submitted to demonstrate compliance with such  
969 regulatory requirements.

970       ~~(25)~~~~(24)~~ "Right-of-way" means land necessary for the  
971 construction and maintenance of a connected associated linear  
972 facility, such as a railroad line, pipeline, or transmission  
973 line as owned by or proposed to be certified by the applicant.  
974 The typical width of the right-of-way shall be identified in the  
975 application. The right-of-way shall be located within the  
976 certified corridor and shall be identified by the applicant  
977 subsequent to certification in documents filed with the  
978 department prior to construction.

979       ~~(28)~~~~(27)~~ "Ultimate site capacity" means the maximum  
980 generating capacity for a site as certified by the board.  
981 ~~"Sufficiency" means that the application is not only complete~~  
982 ~~but that all sections are sufficient in the comprehensiveness of~~  
983 ~~data or in the quality of information provided to allow the~~  
984 ~~department to determine whether the application provides the~~  
985 ~~reviewing agencies adequate information to prepare the reports~~  
986 ~~required by s. 403.507.~~

987       Section 19. Subsections (1), (7), (9), and (10) of section  
988 403.504, Florida Statutes, are amended, and new subsections (9),  
989 (10), (11), and (12) are added to that section, to read:

990       403.504 Department of Environmental Protection; powers and  
991 duties enumerated.--The department shall have the following  
992 powers and duties in relation to this act:

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(1) To adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this act, including rules setting forth environmental precautions to be followed in relation to the location, construction, and operation of electrical power plants.

(7) To conduct studies and prepare a project ~~written~~ analysis under s. 403.507.

(9) To issue final orders after receipt of the administrative law judge's order relinquishing jurisdiction pursuant to s. 403.508(6).

(10) To act as clerk for the siting board.

(11) To administer and manage the terms and conditions of the certification order and supporting documents and records for the life of the facility.

(12) To issue emergency orders on behalf of the board for facilities licensed under this act.

~~(9) To notify all affected agencies of the filing of a notice of intent within 15 days after receipt of the notice.~~

~~(10) To issue, with the electrical power plant certification, any license required pursuant to any federally delegated or approved permit program.~~

Section 20. Section 403.5055, Florida Statutes, is amended to read:

403.5055 Application for permits pursuant to s. 403.0885.--In processing applications for permits pursuant to s. 403.0885 that are associated with applications for electrical power plant certification:



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1020           (1) The procedural requirements set forth in 40 C.F.R. s.  
1021 123.25, including public notice, public comments, and public  
1022 hearings, shall be closely coordinated with the certification  
1023 process established under this part. In the event of a conflict  
1024 between the certification process and federally required  
1025 procedures for NPDES permit issuance, the applicable federal  
1026 requirements shall control.

1027           ~~(2) The department's proposed action pursuant to 40 C.F.R.~~  
1028 ~~s. 124.6, including any draft NPDES permit (containing the~~  
1029 ~~information required under 40 C.F.R. s. 124.6(d)), shall within~~  
1030 ~~130 days after the submittal of a complete application be~~  
1031 ~~publicly noticed and transmitted to the United States~~  
1032 ~~Environmental Protection Agency for its review pursuant to 33~~  
1033 ~~U.S.C. s. 1342(d).~~

1034           (2)(3) If available at the time the department issues its  
1035 project analysis pursuant to s. 403.507(5), the department shall  
1036 include in its project analysis ~~written analysis pursuant to s.~~  
1037 ~~403.507(3)~~ copies of the department's proposed action pursuant  
1038 to 40 C.F.R. s. 124.6 on any application for a NPDES permit; any  
1039 corresponding comments received from the United States  
1040 Environmental Protection Agency, the applicant, or the general  
1041 public; and the department's response to those comments.

1042           (3)(4) The department shall not issue or deny the permit  
1043 pursuant to s. 403.0885 in advance of the issuance of the  
1044 electrical electric power plant certification under this part  
1045 unless required to do so by the provisions of federal law. When  
1046 possible, any hearing on a permit issued pursuant to s. 403.0885  
1047 shall be conducted in conjunction with the certification hearing

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1048 held pursuant to this act. The department's actions on an NPDES  
1049 permit shall be based on the record and recommended order of the  
1050 certification hearing, if the hearing on the NPDES was conducted  
1051 in conjunction with the certification hearing, and of any other  
1052 proceeding held in connection with the application for an NPDES  
1053 permit, timely public comments received with respect to the  
1054 application, and the provisions of federal law. The department's  
1055 action on an NPDES permit, if issued, shall differ from the  
1056 actions taken by the siting board regarding the certification  
1057 order if federal laws and regulations require different action  
1058 to be taken to ensure compliance with the Clean Water Act, as  
1059 amended, and implementing regulations. Nothing in this part  
1060 shall be construed to displace the department's authority as the  
1061 final permitting entity under the federally approved state NPDES  
1062 program. Nothing in this part shall be construed to authorize  
1063 the issuance of a state NPDES permit which does not conform to  
1064 the requirements of the federally approved state NPDES program.  
1065 ~~The permit, if issued, shall be valid for no more than 5 years.~~

1066 ~~(5) The department's action on an NPDES permit renewal, if~~  
1067 ~~issued, shall differ from the actions taken by the siting board~~  
1068 ~~regarding the certification order if federal laws and~~  
1069 ~~regulations require different action to be taken to ensure~~  
1070 ~~compliance with the Clean Water Act, as amended, and~~  
1071 ~~implementing regulations.~~

1072 Section 21. Section 403.506, Florida Statutes, is amended  
1073 to read:

1074 403.506 Applicability, thresholds, and certification.---

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1075           (1) The provisions of this act shall apply to any  
1076       electrical power plant as defined herein, except that the  
1077       provisions of this act shall not apply to any electrical power  
1078       plant or steam generating plant of less than 75 megawatts in  
1079       capacity or to any substation to be constructed as part of an  
1080       associated transmission line unless the applicant has elected to  
1081       apply for certification of such plant or substation under this  
1082       act. The provisions of this act shall not apply to any unit  
1083       capacity expansion of 35 megawatts or less of an existing  
1084       exothermic reaction cogeneration unit that was exempt from this  
1085       act when it was originally built; however, this exemption shall  
1086       not apply if the unit uses oil or natural gas for purposes other  
1087       than unit startup. No construction of any new electrical power  
1088       plant or expansion in steam generating capacity as measured by  
1089       an increase in the maximum electrical generator rating of any  
1090       existing electrical power plant may be undertaken after October  
1091       1, 1973, without first obtaining certification in the manner as  
1092       herein provided, except that this act shall not apply to any  
1093       such electrical power plant which is presently operating or  
1094       under construction or which has, upon the effective date of  
1095       chapter 73-33, Laws of Florida, applied for a permit or  
1096       certification under requirements in force prior to the effective  
1097       date of such act.

1098           (2) Except as provided in the certification, modification  
1099       of nonnuclear fuels, internal related hardware, including  
1100       increases in steam turbine efficiency, or operating conditions  
1101       not in conflict with certification which increase the electrical  
1102       output of a unit to no greater capacity than the maximum

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1103    electrical generator rating operating capacity of the existing  
1104    generator shall not constitute an alteration or addition to  
1105    generating capacity which requires certification pursuant to  
1106    this act.

1107    ~~(3) The application for any related department license~~  
1108    ~~which is required pursuant to any federally delegated or~~  
1109    ~~approved permit program shall be processed within the time~~  
1110    ~~periods allowed by this act, in lieu of those specified in s.~~  
1111    ~~120.60. However, permits issued pursuant to s. 403.0885 shall be~~  
1112    ~~processed in accordance with 40 C.F.R. part 123.~~

1113            Section 22.    Section 403.5064, Florida Statutes, is amended  
1114    to read:

1115            403.5064    Application ~~Distribution of application;~~  
1116    schedules.--

1117            (1) The formal date of filing of a certification  
1118    application and commencement of the certification review process  
1119    shall be when the applicant submits:

1120            (a) Copies of the certification application in a quantity  
1121    and format as prescribed by rule to the department and other  
1122    agencies identified in s. 403.507(2)(a).

1123            (b) The application fee specified under s. 403.518 to the  
1124    department.

1125            (2) ~~(1)~~ Within 7 days after the filing of an application,  
1126    the department shall provide to the applicant and the Division  
1127    of Administrative Hearings the names and addresses of any  
1128    additional ~~those affected or other agencies or persons~~ entitled  
1129    to notice and copies of the application and any amendments.  
1130    Copies of the application shall be distributed within 5 days

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1131 after the provision of such names and addresses by the applicant  
1132 to these additional agencies. This distribution shall not be a  
1133 basis for altering the schedule of dates for the certification  
1134 process.

1135 (3) Any amendment to the application made prior to  
1136 certification shall be disposed of as part of the original  
1137 certification proceeding. Amendment of the application may be  
1138 considered good cause for alteration of time limits pursuant to  
1139 s. 403.5095.

1140 (4) ~~(2)~~ Within 7 days after the filing of an application  
1141 ~~completeness has been determined,~~ the department shall prepare a  
1142 proposed schedule of dates for determination of completeness,  
1143 submission of statements of issues, ~~determination of~~  
1144 ~~sufficiency, and submittal of final reports, from affected and~~  
1145 ~~other agencies~~ and other significant dates to be followed during  
1146 the certification process, including dates for filing notices of  
1147 appearance to be a party pursuant to s. 403.508(3) ~~(4)~~. This  
1148 schedule shall be timely provided by the department to the  
1149 applicant, the administrative law judge, all agencies identified  
1150 pursuant to subsection (2) ~~(1)~~, and all parties. Within 7 days  
1151 after the filing of the proposed schedule, the administrative  
1152 law judge shall issue an order establishing a schedule for the  
1153 matters addressed in the department's proposed schedule and  
1154 other appropriate matters, if any.

1155 (5) ~~(3)~~ Within 7 days after completeness has been  
1156 determined, the applicant shall distribute copies of the  
1157 application to all agencies identified by the department  
1158 pursuant to subsection (1). Copies of changes and amendments to

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CODING: Words stricken are deletions; words underlined are additions.

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1159 the application shall be timely distributed by the applicant to  
1160 all ~~affected~~ agencies and parties who have received a copy of  
1161 the application.

1162 (6) Notice of the filing of the application shall be  
1163 published in accordance with the requirements of s. 403.5115.

1164 Section 23. Section 403.5065, Florida Statutes, is amended  
1165 to read:

1166 403.5065 Appointment of administrative law judge; powers  
1167 and duties.--

1168 (1) Within 7 days after receipt of an application, ~~whether~~  
1169 ~~complete or not,~~ the department shall request the Division of  
1170 Administrative Hearings to designate an administrative law judge  
1171 to conduct the hearings required by this act. The division  
1172 director shall designate an administrative law judge within 7  
1173 days after receipt of the request from the department. In  
1174 designating an administrative law judge for this purpose, the  
1175 division director shall, whenever practicable, assign an  
1176 administrative law judge who has had prior experience or  
1177 training in electrical power plant site certification  
1178 proceedings. Upon being advised that an administrative law judge  
1179 has been appointed, the department shall immediately file a copy  
1180 of the application and all supporting documents with the  
1181 designated administrative law judge, who shall docket the  
1182 application.

1183 (2) The administrative law judge shall have all powers and  
1184 duties granted to administrative law judges by chapter 120 and  
1185 by the laws and rules of the department.

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1186           Section 24.   Section 403.5066, Florida Statutes, is amended  
1187 to read:

1188           403.5066   Determination of completeness.--

1189           (1) (a)   Within 30 days after the filing of an application,  
1190 affected agencies shall file a statement with the department  
1191 containing each agency's recommendations on the completeness of  
1192 the application.

1193           (b)   Within 40 ~~15~~ days after the filing receipt of an  
1194 application, the department shall file a statement with the  
1195 Division of Administrative Hearings, and with the applicant, and  
1196 with all parties declaring its position with regard to the  
1197 completeness, ~~not the sufficiency,~~ of the application. The  
1198 department's statement shall be based upon consultation with the  
1199 affected agencies.

1200           (2) ~~(1)~~   If the department declares the application to be  
1201 incomplete, the applicant, within 15 days after the filing of  
1202 the statement by the department, shall file with the Division of  
1203 Administrative Hearings, and with the department, and all  
1204 parties a statement:

1205           (a)   A withdrawal of Agreeing with the statement of the  
1206 department and withdrawing the application;

1207           (b)   A statement agreeing to supply the additional  
1208 information necessary to make the application complete. Such  
1209 additional information shall be provided within 30 days after  
1210 the issuance of the department's statement on completeness of  
1211 the application. The time schedules under this act shall not be  
1212 tolled if the applicant makes the application complete within 30  
1213 days after the issuance of the department's statement on

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1214 completeness of the application. A subsequent finding by the  
1215 department that the application remains incomplete, based upon  
1216 the additional information submitted by the applicant or upon  
1217 the failure of the applicant to timely submit the additional  
1218 information, tolls the time schedules under this act until the  
1219 application is determined complete; Agreeing with the statement  
1220 of the department and agreeing to amend the application without  
1221 withdrawing it. The time schedules referencing a complete  
1222 application under this act shall not commence until the  
1223 application is determined complete; or

1224 (c) A statement contesting the department's determination  
1225 of incompleteness; or contesting the statement of the  
1226 department.

1227 (d) A statement agreeing with the department and  
1228 requesting additional time beyond 30 days to provide the  
1229 information necessary to make the application complete. If the  
1230 applicant exercises this option, the time schedules under this  
1231 act are tolled until the application is determined complete.

1232 (3) (a) - (2) If the applicant contests the determination by  
1233 the department that an application is incomplete, the  
1234 administrative law judge shall schedule a hearing on the  
1235 statement of completeness. The hearing shall be held as  
1236 expeditiously as possible, but not later than 21 ~~30~~ days after  
1237 the filing of the statement by the department. The  
1238 administrative law judge shall render a decision within 7 ~~10~~  
1239 days after the hearing.



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1240        (b) Parties to a hearing on the issue of completeness  
1241        shall include the applicant, the department, and any agency that  
1242        has jurisdiction over the matter in dispute.

1243        (c) ~~(a)~~ If the administrative law judge determines that the  
1244        application was not complete as ~~filed~~, the applicant shall  
1245        withdraw the application or make such additional submittals as  
1246        necessary to complete it. The time schedules referencing a  
1247        complete application under this act shall not commence until the  
1248        application is determined complete.

1249        (d) ~~(b)~~ If the administrative law judge determines that the  
1250        application was complete at the time it was declared incomplete  
1251        ~~filed~~, the time schedules referencing a complete application  
1252        under this act shall commence upon such determination.

1253        (4) If the applicant provides additional information to  
1254        address the issues identified in the determination of  
1255        incompleteness, each affected agency may submit to the  
1256        department, no later than 15 days after the applicant files the  
1257        additional information, a recommendation on whether the agency  
1258        believes the application is complete. Within 22 days after  
1259        receipt of the additional information from the applicant  
1260        submitted under paragraph (2) (b), paragraph (2) (d), or paragraph  
1261        (3) (c), the department shall determine whether the additional  
1262        information supplied by an applicant makes the application  
1263        complete. If the department finds that the application is still  
1264        incomplete, the applicant may exercise any of the options  
1265        specified in subsection (2) as often as is necessary to resolve  
1266        the dispute.

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1267           Section 25.   Section 403.50663, Florida Statutes, is  
1268   created to read:

1269           403.50663   Informational public meetings.--

1270           (1)   A local government within whose jurisdiction the power  
1271 plant is proposed to be sited may hold one informational public  
1272 meeting in addition to the hearings specifically authorized by  
1273 this act on any matter associated with the electrical power  
1274 plant proceeding. Such informational public meetings shall be  
1275 held by the local government or by the regional planning council  
1276 if the local government does not hold such meeting within 70  
1277 days after the filing of the application. The purpose of an  
1278 informational public meeting is for the local government or  
1279 regional planning council to further inform the public about the  
1280 proposed electrical power plant or associated facilities, obtain  
1281 comments from the public, and formulate its recommendation with  
1282 respect to the proposed electrical power plant.

1283           (2)   Informational public meetings shall be held solely at  
1284 the option of each local government or regional planning council  
1285 if a public meeting is not held by the local government. It is  
1286 the legislative intent that local governments or regional  
1287 planning councils attempt to hold such public meetings. Parties  
1288 to the proceedings under this act shall be encouraged to attend;  
1289 however, no party other than the applicant and the department  
1290 shall be required to attend such informational public meetings.

1291           (3)   A local government or regional planning council that  
1292 intends to conduct an informational public meeting must provide  
1293 notice of the meeting to all parties not less than 5 days prior  
1294 to the meeting.

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(4) The failure to hold an informational public meeting or the procedure used for the informational public meeting are not grounds for the alteration of any time limitation in this act under s. 403.5095 or grounds to deny or condition certification.

Section 26. Section 403.50665, Florida Statutes, is created to read:

403.50665 Land use consistency.--

(1) The applicant shall include in the application a statement on the consistency of the site or any directly associated facilities with existing land use plans and zoning ordinances that were in effect on the date the application was filed and a full description of such consistency.

(2) Within 80 days after the filing of the application, each local government shall file a determination with the department, the applicant, the administrative law judge, and all parties on the consistency of the site or any directly associated facilities with existing land use plans and zoning ordinances that were in effect on the date the application was filed, based on the information provided in the application. The applicant shall publish notice of the consistency determination in accordance with the requirements of s. 403.5115.

(3) If any substantially affected person wishes to dispute the local government's determination, he or she shall file a petition with the department within 15 days after the publication of notice of the local government's determination. If a hearing is requested, the provisions of s. 403.508(1) shall apply.

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(4) The dates in this section may be altered upon agreement between the applicant, the local government, and the department pursuant to s. 403.5095.

(5) If it is determined by the local government that the proposed site or directly associated facility does conform with existing land use plans and zoning ordinances in effect as of the date of the application and no petition has been filed, the responsible zoning or planning authority shall not thereafter change such land use plans or zoning ordinances so as to foreclose construction and operation of the proposed site or directly associated facilities unless certification is subsequently denied or withdrawn.

Section 27. Section 403.5067, Florida Statutes, is repealed.

Section 28. Section 403.507, Florida Statutes, is amended to read:

403.507 Preliminary statements of issues, reports, project analyses, and studies.--

(1) Each affected agency identified in paragraph (2)(a) shall submit a preliminary statement of issues to the department, and the applicant, and all parties no later than 40 60 days after the certification application has been determined distribution of the complete application. The failure to raise an issue in this statement shall not preclude the issue from being raised in the agency's report.

(2)(a) No later than 100 days after the certification application has been determined complete, the following agencies shall prepare reports as provided below and shall submit them to

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the department and the applicant ~~within 150 days after~~  
~~distribution of the complete application:~~

1. The Department of Community Affairs shall prepare a report containing recommendations which address the impact upon the public of the proposed electrical power plant, based on the degree to which the electrical power plant is consistent with the applicable portions of the state comprehensive plan, emergency management requirements, and other such matters within its jurisdiction. The Department of Community Affairs may also comment on the consistency of the proposed electrical power plant with applicable strategic regional policy plans or local comprehensive plans and land development regulations.

~~2. The Public Service Commission shall prepare a report as to the present and future need for the electrical generating capacity to be supplied by the proposed electrical power plant. The report shall include the commission's determination pursuant to s. 403.519 and may include the commission's comments with respect to any other matters within its jurisdiction.~~

2.3. The water management district shall prepare a report as to matters within its jurisdiction, including but not limited to, the impact of the proposed electrical power plant on water resources, regional water supply planning, and district-owned lands and works.

3.4. Each local government in whose jurisdiction the proposed electrical power plant is to be located shall prepare a report as to the consistency of the proposed electrical power plant with all applicable local ordinances, regulations, standards, or criteria that apply to the proposed electrical

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power plant, including ~~adopted local comprehensive plans, land development regulations, and~~ any applicable local environmental regulations adopted pursuant to s. 403.182 or by other means.

4.5. The Fish and Wildlife Conservation Commission shall prepare a report as to matters within its jurisdiction.

5.6. ~~Each~~ The regional planning council shall prepare a report containing recommendations that address the impact upon the public of the proposed electrical power plant, based on the degree to which the electrical power plant is consistent with the applicable provisions of the strategic regional policy plan adopted pursuant to chapter 186 and other matters within its jurisdiction.

6. The Department of Transportation shall address the impact of the proposed electrical power plant on matters within its jurisdiction.

(b)7. Any other agency, if requested by the department, shall also perform studies or prepare reports as to matters within that agency's jurisdiction which may potentially be affected by the proposed electrical power plant.

~~(b) As needed to verify or supplement the studies made by the applicant in support of the application, it shall be the duty of the department to conduct, or contract for, studies of the proposed electrical power plant and site, including, but not limited to, the following, which shall be completed no later than 210 days after the complete application is filed with the department:~~

~~1. Cooling system requirements.~~

~~2. Construction and operational safeguards.~~

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1406        ~~3. Proximity to transportation systems.~~  
1407        ~~4. Soil and foundation conditions.~~  
1408        ~~5. Impact on suitable present and projected water supplies~~  
1409 ~~for this and other competing uses.~~  
1410        ~~6. Impact on surrounding land uses.~~  
1411        ~~7. Accessibility to transmission corridors.~~  
1412        ~~8. Environmental impacts.~~  
1413        ~~9. Requirements applicable under any federally delegated~~  
1414 ~~or approved permit program.~~  
1415        ~~(3)(e)~~ Each report described in subsection (2) paragraphs  
1416 ~~(a) and (b)~~ shall contain:  
1417        (a) A notice of any nonprocedural requirements not  
1418 specifically listed in the application from which a variance,  
1419 exemption, exception all information on variances, exemptions,  
1420 exceptions, or other relief is necessary in order for the  
1421 proposed electrical power plant to be certified. Failure of such  
1422 notification by an agency shall be treated as a waiver from  
1423 nonprocedural requirements of that agency. However, no variance  
1424 shall be granted from standards or regulations of the department  
1425 applicable under any federally delegated or approved permit  
1426 program, except as expressly allowed in such program. which may  
1427 ~~be required by s. 403.511(2) and~~  
1428        (b) A recommendation for approval or denial of the  
1429 application.  
1430        (c) Any proposed conditions of certification on matters  
1431 within the jurisdiction of such agency. For each condition  
1432 proposed by an agency in its report, the agency shall list the

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specific statute, rule, or ordinance which authorizes the proposed condition.

(d) The agencies shall initiate the activities required by this section no later than 30 days after the complete application is distributed. The agencies shall keep the applicant and the department informed as to the progress of the studies and any issues raised thereby.

~~(3) No later than 60 days after the application for a federally required new source review or prevention of significant deterioration permit for the electrical power plant is complete and sufficient, the department shall issue its preliminary determination on such permit. Notice of such determination shall be published as required by the department's rules for notices of such permits. The department shall receive public comments and comments from the United States Environmental Protection Agency and other affected agencies on the preliminary determination as provided for in the federally approved state implementation plan. The department shall maintain a record of all comments received and considered in taking action on such permits. If a petition for an administrative hearing on the department's preliminary determination is filed by a substantially affected person, that hearing shall be consolidated with the certification hearing.~~

(4) (a) No later than 150 days after the application is filed, the Public Service Commission shall prepare a report as to the present and future need for electrical generating capacity to be supplied by the proposed electrical power plant. The report shall include the commission's determination pursuant



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to s. 403.519 and may include the commission's comments with respect to any other matters within its jurisdiction.

(b) Receipt of an affirmative determination of need by the submittal deadline under paragraph (a) shall be a condition precedent to issuance of the department's project analysis and conduct of the certification hearing.

~~(5)(4)~~ The department shall prepare a project written analysis, which shall be filed with the designated administrative law judge and served on all parties no later than 130 ~~240~~ days after the ~~complete~~ application is determined ~~complete~~ filed with the department, but no later than ~~60~~ days prior to the hearing, and which shall include:

(a) A statement indicating whether the proposed electrical power plant and proposed ultimate site capacity will be in compliance and consistent with matters within the department's standard jurisdiction, including with the rules of the department, as well as whether the proposed electrical power plant and proposed ultimate site capacity will be in compliance with the nonprocedural requirements of the affected agencies.

(b) Copies of the studies and reports required by this section and ~~s. 403.519~~.

(c) The comments received by the department from any other agency or person.

(d) The recommendation of the department as to the disposition of the application, of variances, exemptions, exceptions, or other relief identified by any party, and of any proposed conditions of certification which the department believes should be imposed.

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1489           (e) If available, the recommendation of the department  
1490 regarding the issuance of any license required pursuant to a  
1491 federally delegated or approved permit program.

1492           ~~(f) Copies of the department's draft of the operation~~  
1493 ~~permit for a major source of air pollution, which must also be~~  
1494 ~~provided to the United States Environmental Protection Agency~~  
1495 ~~for review within 5 days after issuance of the written analysis.~~

1496           (6)-(5) Except when good cause is shown, the failure of any  
1497 agency to submit a preliminary statement of issues or a report,  
1498 or to submit its preliminary statement of issues or report  
1499 within the allowed time, shall not be grounds for the alteration  
1500 of any time limitation in this act. Neither the failure to  
1501 submit a preliminary statement of issues or a report nor the  
1502 inadequacy of the preliminary statement of issues or report are  
1503 ~~shall be~~ grounds to deny or condition certification.

1504           Section 29. Section 403.508, Florida Statutes, is amended  
1505 to read:

1506           403.508 Land use and certification hearings ~~proceedings~~,  
1507 parties, participants.--

1508           (1)(a) If a petition for a hearing on land use has been  
1509 filed pursuant to s. 403.50665, the designated administrative  
1510 law judge shall conduct a land use hearing in the county of the  
1511 proposed site or directly associated facility, as applicable, as  
1512 expeditiously as possible, but not later than 30 ~~within 90~~ days  
1513 ~~after the department's receipt of the petition a complete~~  
1514 ~~application for electrical power plant site certification by the~~  
1515 ~~department.~~ The place of such hearing shall be as close as  
1516 possible to the proposed site or directly associated facility.

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1517    If a petition is filed, the hearing shall be held regardless of  
1518    the status of the completeness of the application. However,  
1519    incompleteness of information necessary for a local government  
1520    to evaluate an application may be claimed by the local  
1521    government as cause for a statement of inconsistency with  
1522    existing land use plans and zoning ordinances under s.  
1523    403.50665.

1524        (b) Notice of the land use hearing shall be published in  
1525    accordance with the requirements of s. 403.5115.

1526        (c) ~~(2)~~ The sole issue for determination at the land use  
1527    hearing shall be whether or not the proposed site is consistent  
1528    and in compliance with existing land use plans and zoning  
1529    ordinances. If the administrative law judge concludes that the  
1530    proposed site is not consistent or in compliance with existing  
1531    land use plans and zoning ordinances, the administrative law  
1532    judge shall receive at the hearing evidence on, and address in  
1533    the recommended order any changes to or approvals or variances  
1534    under, the applicable land use plans or zoning ordinances which  
1535    will render the proposed site consistent and in compliance with  
1536    the local land use plans and zoning ordinances.

1537        (d) The designated administrative law judge's recommended  
1538    order shall be issued within 30 days after completion of the  
1539    hearing and shall be reviewed by the board within ~~60~~ 45 days  
1540    after receipt of the recommended order by the board.

1541        (e) If it is determined by the board that the proposed  
1542    site does conform with existing land use plans and zoning  
1543    ordinances in effect as of the date of the application, or as  
1544    otherwise provided by this act, the responsible zoning or

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1545 planning authority shall not thereafter change such land use  
1546 plans or zoning ordinances so as to foreclose construction and  
1547 operation of ~~affected~~ the proposed electrical power plant on the  
1548 proposed site or directly associated facilities unless  
1549 certification is subsequently denied or withdrawn.

1550 (f) If it is determined by the board that the proposed  
1551 site does not conform with existing land use plans and zoning  
1552 ordinances, ~~it shall be the responsibility of the applicant to~~  
1553 ~~make the necessary application for rezoning. Should the~~  
1554 ~~application for rezoning be denied, the applicant may appeal~~  
1555 ~~this decision to the board, which may, if it determines after~~  
1556 notice and hearing and upon consideration of the recommended  
1557 order on land use and zoning issues that it is in the public  
1558 interest to authorize the use of the land as a site for an  
1559 electrical power plant, authorize an amendment, rezoning,  
1560 variance, or other approval ~~a variance~~ to the adopted land use  
1561 plan and zoning ordinances required to render the proposed site  
1562 consistent with local land use plans and zoning ordinances. The  
1563 board's action shall not be controlled by any other procedural  
1564 requirements of law. In the event a variance or other approval  
1565 is denied by the board, it shall be the responsibility of the  
1566 applicant to make the necessary application for any approvals  
1567 determined by the board as required to make the proposed site  
1568 consistent and in compliance with local land use plans and  
1569 zoning ordinances. No further action may be taken on the  
1570 complete application by the department until the proposed site  
1571 conforms to the adopted land use plan or zoning ordinances or  
1572 the board grants relief as provided under this act.

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1573        (2) (a) (3) A certification hearing shall be held by the  
1574 designated administrative law judge no later than 265 ~~300~~ days  
1575 after the ~~complete~~ application is filed with the department,  
1576 however, ~~an affirmative determination of need by the Public~~  
1577 ~~Service Commission pursuant to s. 403.519 shall be a condition~~  
1578 ~~precedent to the conduct of the certification hearing.~~ The  
1579 certification hearing shall be held at a location in proximity  
1580 to the proposed site. The certification hearing shall also  
1581 ~~constitute the sole hearing allowed by chapter 120 to determine~~  
1582 ~~the substantial interest of a party regarding any required~~  
1583 ~~agency license or any related permit required pursuant to any~~  
1584 ~~federally delegated or approved permit program.~~ At the  
1585 conclusion of the certification hearing, the designated  
1586 administrative law judge shall, after consideration of all  
1587 evidence of record, submit to the board a recommended order no  
1588 later than 45 ~~60~~ days after the filing of the hearing  
1589 transcript. ~~In the event the administrative law judge fails to~~  
1590 ~~issue a recommended order within 60 days after the filing of the~~  
1591 ~~hearing transcript, the administrative law judge shall submit a~~  
1592 ~~report to the board with a copy to all parties within 60 days~~  
1593 ~~after the filing of the hearing transcript to advise the board~~  
1594 ~~of the reason for the delay in the issuance of the recommended~~  
1595 ~~order and of the date by which the recommended order will be~~  
1596 ~~issued.~~

1597        (b) Notice of the certification hearing and notice of the  
1598 deadline for filing of notice of intent to be a party shall be  
1599 made in accordance with the requirements of s. 403.5115.

1600        (3) (a) (4) (a) Parties to the proceeding shall include:

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- 1601           1.   The applicant.
- 1602           2.   The Public Service Commission.
- 1603           3.   The Department of Community Affairs.
- 1604           4.   The Fish and Wildlife Conservation Commission.
- 1605           5.   The water management district.
- 1606           6.   The department.
- 1607           7.   The regional planning council.
- 1608           8.   The local government.
- 1609           9.   The Department of Transportation.

1610           (b)   Any party listed in paragraph (a) other than the  
1611 department or the applicant may waive its right to participate  
1612 in these proceedings. If such listed party fails to file a  
1613 notice of its intent to be a party on or before the 90th day  
1614 prior to the certification hearing, such party shall be deemed  
1615 to have waived its right to be a party.

1616           (c)   Notwithstanding the provisions of chapter 120, upon  
1617 the filing with the administrative law judge of a notice of  
1618 intent to be a party no later than 75 days after the application  
1619 is filed at least 15 days prior to the date of the land use  
1620 hearing, the following shall also be parties to the proceeding:

- 1621           1.   Any agency not listed in paragraph (a) as to matters  
1622 within its jurisdiction.
- 1623           2.   Any domestic nonprofit corporation or association  
1624 formed, in whole or in part, to promote conservation or natural  
1625 beauty; to protect the environment, personal health, or other  
1626 biological values; to preserve historical sites; to promote  
1627 consumer interests; to represent labor, commercial, or  
1628 industrial groups; or to promote comprehensive planning or

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1629     orderly development of the area in which the proposed electrical  
1630     power plant is to be located.

1631             (d)   Notwithstanding paragraph (e), failure of an agency  
1632     described in subparagraph (c)1. to file a notice of intent to be  
1633     a party within the time provided herein shall constitute a  
1634     waiver of the right of that agency to participate as a party in  
1635     the proceeding.

1636             (e)   Other parties may include any person, including those  
1637     persons enumerated in paragraph (c) who have failed to timely  
1638     file a notice of intent to be a party, whose substantial  
1639     interests are affected and being determined by the proceeding  
1640     and who timely file a motion to intervene pursuant to chapter  
1641     120 and applicable rules. Intervention pursuant to this  
1642     paragraph may be granted at the discretion of the designated  
1643     administrative law judge and upon such conditions as he or she  
1644     may prescribe any time prior to 30 days before the commencement  
1645     of the certification hearing.

1646             (f)   Any agency, including those whose properties or works  
1647     are being affected pursuant to s. 403.509(4), shall be made a  
1648     party upon the request of the department or the applicant.

1649             (4) (a)   The order of presentation at the certification  
1650     hearing, unless otherwise changed by the administrative law  
1651     judge to ensure the orderly presentation of witnesses and  
1652     evidence, shall be:

- 1653             1.   The applicant.
- 1654             2.   The department.
- 1655             3.   State agencies.

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1656        4. Regional agencies, including regional planning councils  
1657 and water management districts.

1658        5. Local governments.

1659        6. Other parties.

1660        (b) ~~(5)~~ When appropriate, any person may be given an  
1661 opportunity to present oral or written communications to the  
1662 designated administrative law judge. If the designated  
1663 administrative law judge proposes to consider such  
1664 communications, then all parties shall be given an opportunity  
1665 to cross-examine or challenge or rebut such communications.

1666        (5) At the conclusion of the certification hearing, the  
1667 designated administrative law judge shall, after consideration  
1668 of all evidence of record, submit to the board a recommended  
1669 order no later than 45 days after the filing of the hearing  
1670 transcript.

1671        (6) (a) No earlier than 29 days prior to the conduct of the  
1672 certification hearing, the department or the applicant may  
1673 request that the administrative law judge cancel the  
1674 certification hearing and relinquish jurisdiction to the  
1675 department if all parties to the proceeding stipulate that there  
1676 are no disputed issues of fact or law to be raised at the  
1677 certification hearing, and if sufficient time remains for the  
1678 applicant and the department to publish public notices of the  
1679 cancellation of the hearing at least 3 days prior to the  
1680 scheduled date of the hearing.

1681        (b) The administrative law judge shall issue an order  
1682 granting or denying the request within 5 days after receipt of  
1683 the request.



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1684        (c) If the administrative law judge grants the request,  
1685        the department and the applicant shall publish notices of the  
1686        cancellation of the certification hearing, in accordance with s.  
1687        403.5115.

1688        (d)1. If the administrative law judge grants the request,  
1689        the department shall prepare and issue a final order in  
1690        accordance with s. 403.509(1)(a).

1691        2. Parties may submit proposed recommended orders to the  
1692        department no later than 10 days after the administrative law  
1693        judge issues an order relinquishing jurisdiction.

1694        (7) The applicant shall pay those expenses and costs  
1695        associated with the conduct of the hearings and the recording  
1696        and transcription of the proceedings.

1697        ~~(6) The designated administrative law judge shall have all~~  
1698        ~~powers and duties granted to administrative law judges by~~  
1699        ~~chapter 120 and this chapter and by the rules of the department~~  
1700        ~~and the Administration Commission, including the authority to~~  
1701        ~~resolve disputes over the completeness and sufficiency of an~~  
1702        ~~application for certification.~~

1703        ~~(7) The order of presentation at the certification~~  
1704        ~~hearing, unless otherwise changed by the administrative law~~  
1705        ~~judge to ensure the orderly presentation of witnesses and~~  
1706        ~~evidence, shall be:~~

1707        ~~(a) The applicant.~~

1708        ~~(b) The department.~~

1709        ~~(c) State agencies.~~

1710        ~~(d) Regional agencies, including regional planning~~  
1711        ~~councils and water management districts.~~

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1712        ~~(e) Local governments.~~  
1713        ~~(f) Other parties.~~  
1714        (8) In issuing permits under the federally approved new  
1715 source review or prevention of significant deterioration permit  
1716 program, the department shall observe the procedures specified  
1717 under the federally approved state implementation plan,  
1718 including public notice, public comment, public hearing, and  
1719 notice of applications and amendments to federal, state, and  
1720 local agencies, to assure that all such permits issued in  
1721 coordination with the certification of a power plant under this  
1722 act are federally enforceable and are issued after opportunity  
1723 for informed public participation regarding the terms and  
1724 conditions thereof. When possible, any hearing on a federally  
1725 approved or delegated program permit such as new source review,  
1726 prevention of significant deterioration permit, or NPDES permit  
1727 shall be conducted in conjunction with the certification hearing  
1728 held under this act. ~~The department shall accept written comment~~  
1729 ~~with respect to an application for, or the department's~~  
1730 ~~preliminary determination on, a new source review or prevention~~  
1731 ~~of significant deterioration permit for a period of no less than~~  
1732 ~~30 days from the date notice of such action is published. Upon~~  
1733 ~~request submitted within 30 days after published notice, the~~  
1734 ~~department shall hold a public meeting, in the area affected,~~  
1735 ~~for the purpose of receiving public comment on issues related to~~  
1736 ~~the new source review or prevention of significant deterioration~~  
1737 ~~permit. If requested following notice of the department's~~  
1738 ~~preliminary determination, the public meeting to receive public~~  
1739 ~~comment shall be held prior to the scheduled certification~~

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1740 ~~hearing. The department shall also solicit comments from the~~  
1741 ~~United States Environmental Protection Agency and other affected~~  
1742 ~~federal agencies regarding the department's preliminary~~  
1743 ~~determination for any federally required new source review or~~  
1744 ~~prevention of significant deterioration permit. It is the intent~~  
1745 ~~of the Legislature that the review, processing, and issuance of~~  
1746 ~~such federally delegated or approved permits be closely~~  
1747 ~~coordinated with the certification process established under~~  
1748 ~~this part. In the event of a conflict between the certification~~  
1749 ~~process and federally required procedures contained in the state~~  
1750 ~~implementation plan, the applicable federal requirements of the~~  
1751 ~~implementation plan shall control.~~

1752 Section 30. Section 403.509, Florida Statutes, is amended  
1753 to read:

1754 403.509 Final disposition of application.--

1755 (1)(a) If the administrative law judge has granted a  
1756 request to cancel the certification hearing and has relinquished  
1757 jurisdiction to the department under the provisions of s.  
1758 403.508(6), within 40 days thereafter, the secretary of the  
1759 department shall act upon the application by written order in  
1760 accordance with the terms of this act and the stipulation of the  
1761 parties in requesting cancellation of the certification hearing.

1762 (b) If the administrative law judge has not granted a  
1763 request to cancel the certification hearing under the provisions  
1764 of s. 403.508(6), within 60 days after receipt of the designated  
1765 administrative law judge's recommended order, the board shall  
1766 act upon the application by written order, approving  
1767 certification or denying certification the issuance of a

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CODING: Words stricken are deletions; words underlined are additions.

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1768 ~~certificate~~, in accordance with the terms of this act, and  
1769 stating the reasons for issuance or denial. If certification ~~the~~  
1770 ~~certificate~~ is denied, the board shall set forth in writing the  
1771 action the applicant would have to take to secure the board's  
1772 approval of the application.

1773       (2) The issues that may be raised in any hearing before  
1774 the board shall be limited to those matters raised in the  
1775 certification proceeding before the administrative law judge or  
1776 raised in the recommended order. All parties, or their  
1777 representatives, or persons who appear before the board shall be  
1778 subject to the provisions of s. 120.66.

1779       (3) In determining whether an application should be  
1780 approved in whole, approved with modifications or conditions, or  
1781 denied, the board, or secretary when applicable, shall consider  
1782 whether, and the extent to which, the location of the electrical  
1783 power plant and directly associated facilities and their  
1784 construction and operation will:

1785       (a) Provide reasonable assurance that operational  
1786 safeguards are technically sufficient for the public welfare and  
1787 protection.

1788       (b) Comply with applicable nonprocedural requirements of  
1789 agencies.

1790       (c) Be consistent with applicable local government  
1791 comprehensive plans and land development regulations.

1792       (d) Meet the electrical energy needs of the state in an  
1793 orderly and timely fashion.

1794       (e) Provide a reasonable balance between the need for the  
1795 facility as established pursuant to s. 403.519, and the impacts

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upon air and water quality, fish and wildlife, water resources,  
and other natural resources of the state resulting from the  
construction and operation of the facility.

(f) Minimize, through the use of reasonable and available  
methods, the adverse effects on human health, the environment,  
and the ecology of the land and its wildlife and the ecology of  
state waters and their aquatic life.

(g) Serve and protect the broad interests of the public.

~~(3) Within 30 days after issuance of the certification,~~  
~~the department shall issue and forward to the United States~~  
~~Environmental Protection Agency a proposed operation permit for~~  
~~a major source of air pollution and must issue or deny any other~~  
~~license required pursuant to any federally delegated or approved~~  
~~permit program. The department's action on the license and its~~  
~~action on the proposed operation permit for a major source of~~  
~~air pollution shall be based upon the record and recommended~~  
~~order of the certification hearing. The department's actions on~~  
~~a federally required new source review or prevention of~~  
~~significant deterioration permit shall be based on the record~~  
~~and recommended order of the certification hearing and of any~~  
~~other proceeding held in connection with the application for a~~  
~~new source review or prevention of significant deterioration~~  
~~permit, on timely public comments received with respect to the~~  
~~application or preliminary determination for such permit, and on~~  
~~the provisions of the state implementation plan.~~

(4) The department's action on a federally required new  
source review or prevention of significant deterioration permit  
shall differ from the actions taken by the siting board

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1824 regarding the certification if the federally approved state  
1825 implementation plan requires such a different action to be taken  
1826 by the department. Nothing in this part shall be construed to  
1827 displace the department's authority as the final permitting  
1828 entity under the federally approved permit program. Nothing in  
1829 this part shall be construed to authorize the issuance of a new  
1830 source review or prevention of significant deterioration permit  
1831 which does not conform to the requirements of the federally  
1832 approved state implementation plan. ~~Any final operation permit~~  
1833 ~~for a major source of air pollution must be issued in accordance~~  
1834 ~~with the provisions of s. 403.0872. Unless the federally~~  
1835 ~~delegated or approved permit program provides otherwise,~~  
1836 ~~licenses issued by the department under this subsection shall be~~  
1837 ~~effective for the term of the certification issued by the board.~~  
1838 ~~If renewal of any license issued by the department pursuant to a~~  
1839 ~~federally delegated or approved permit program is required, such~~  
1840 ~~renewal shall not affect the certification issued by the board,~~  
1841 ~~except as necessary to resolve inconsistencies pursuant to s.~~  
1842 ~~403.516(1)(a).~~

1843       (5)(4) In regard to the properties and works of any agency  
1844 which is a party to the certification hearing, the board shall  
1845 have the authority to decide issues relating to the use, the  
1846 connection thereto, or the crossing thereof, for the electrical  
1847 power plant and directly associated facilities ~~site~~ and to  
1848 direct any such agency to execute, within 30 days after the  
1849 entry of certification, the necessary license or easement for  
1850 such use, connection, or crossing, subject only to the  
1851 conditions set forth in such certification. However, the

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1852 applicant shall seek any necessary interest in state lands the  
1853 title to which is vested in the Board of Trustees of the  
1854 Internal Improvement Trust Fund from the Board of Trustees or  
1855 from the governing board of the water management district  
1856 created pursuant to chapter 373 before, during, or after the  
1857 certification proceeding, and certification may be made  
1858 contingent upon issuance of the appropriate interest. Neither  
1859 the applicant nor any party to the certification proceeding may  
1860 directly or indirectly raise or relitigate any matter that was  
1861 or could have been an issue in the certification proceeding in  
1862 any proceeding before the Board of Trustees of the Internal  
1863 Improvement Trust Fund wherein the applicant is seeking  
1864 necessary interest in state lands, but the information presented  
1865 in the certification proceeding shall be available for review by  
1866 the Board of Trustees and its staff.

1867 ~~(6)(5)~~ Except as specified in subsection (4) for the  
1868 ~~issuance of any operation permit for a major source of air~~  
1869 ~~pollution pursuant to s. 403.0872, the issuance or denial of the~~  
1870 ~~certification by the board or secretary of the department and~~  
1871 ~~the issuance or denial of any related department license~~  
1872 ~~required pursuant to any federally delegated or approved permit~~  
1873 ~~program shall be the final administrative action required as to~~  
1874 ~~that application.~~

1875 ~~(6)~~ All ~~certified electrical power plants must apply for~~  
1876 ~~and obtain a major source air operation permit pursuant to s.~~  
1877 ~~403.0872. Major source air operation permit applications for~~  
1878 ~~certified electrical power plants must be submitted pursuant to~~  
1879 ~~a schedule developed by the department. To the extent that any~~

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1880 ~~conflicting provision, limitation, or restriction under any~~  
1881 ~~rule, regulation, or ordinance imposed by any political~~  
1882 ~~subdivision of the state, or by any local pollution control~~  
1883 ~~program, was superseded during the certification process~~  
1884 ~~pursuant to s. 403.510(1), such rule, regulation, or ordinance~~  
1885 ~~shall continue to be superseded for purposes of the major source~~  
1886 ~~air operation permit program under s. 403.0872.~~

1887       Section 31. Section 403.511, Florida Statutes, is amended  
1888 to read:

1889       403.511 Effect of certification.--

1890       (1) Subject to the conditions set forth therein, any  
1891 certification ~~signed by the Governor~~ shall constitute the sole  
1892 license of the state and any agency as to the approval of the  
1893 site and the construction and operation of the proposed  
1894 electrical power plant, except for the issuance of department  
1895 licenses required under any federally delegated or approved  
1896 permit program and except as otherwise provided in subsection  
1897 (4).

1898       (2)(a) The certification shall authorize the licensee  
1899 ~~applicant~~ named therein to construct and operate the proposed  
1900 electrical power plant, subject only to the conditions of  
1901 certification set forth in such certification, and except for  
1902 the issuance of department licenses or permits required under  
1903 any federally delegated or approved permit program.

1904       (b)1. Except as provided in subsection (4), the  
1905 certification may include conditions which constitute variances,  
1906 exemptions, or exceptions from nonprocedural requirements of the  
1907 department or any agency which were expressly considered during



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1908    the proceeding, including, but not limited to, any site specific  
1909    criteria, standards, or limitations under local land use and  
1910    zoning approvals which affect the proposed electrical power  
1911    plant or its site, unless waived by the agency as provided below  
1912    and which otherwise would be applicable to the construction and  
1913    operation of the proposed electrical power plant.

1914        2. No variance, exemption, exception, or other relief  
1915    shall be granted from a state statute or rule for the protection  
1916    of endangered or threatened species, aquatic preserves,  
1917    Outstanding National Resource Waters, or Outstanding Florida  
1918    Waters or for the disposal of hazardous waste, except to the  
1919    extent authorized by the applicable statute or rule or except  
1920    upon a finding in the certification order ~~by the siting board~~  
1921    that the public interests set forth in s. 403.509(3) ~~403.502~~ in  
1922    certifying the electrical power plant at the site proposed by  
1923    the applicant overrides the public interest protected by the  
1924    statute or rule from which relief is sought. ~~Each party shall~~  
1925    ~~notify the applicant and other parties at least 60 days prior to~~  
1926    ~~the certification hearing of any nonprocedural requirements not~~  
1927    ~~specifically listed in the application from which a variance,~~  
1928    ~~exemption, exception, or other relief is necessary in order for~~  
1929    ~~the board to certify any electrical power plant proposed for~~  
1930    ~~certification. Failure of such notification by an agency shall~~  
1931    ~~be treated as a waiver from nonprocedural requirements of the~~  
1932    ~~department or any other agency. However, no variance shall be~~  
1933    ~~granted from standards or regulations of the department~~  
1934    ~~applicable under any federally delegated or approved permit~~  
1935    ~~program, except as expressly allowed in such program.~~

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1936           (3) The certification and any order on land use and zoning  
1937 issued under this act shall be in lieu of any license, permit,  
1938 certificate, or similar document required by any state,  
1939 regional, or local agency pursuant to, but not limited to,  
1940 chapter 125, chapter 161, chapter 163, chapter 166, chapter 186,  
1941 chapter 253, chapter 298, chapter 370, chapter 373, chapter 376,  
1942 chapter 380, chapter 381, chapter 387, chapter 403, except for  
1943 permits issued pursuant to any federally delegated or approved  
1944 permit program ~~s. 403.0885~~ and except as provided in ~~s.~~  
1945 ~~403.509(3) and (6),~~ chapter 404, or the Florida Transportation  
1946 Code, ~~or 33 U.S.C. s. 1341.~~

1947           (4) This act shall not affect in any way the ratemaking  
1948 powers of the Public Service Commission under chapter 366; nor  
1949 shall this act in any way affect the right of any local  
1950 government to charge appropriate fees or require that  
1951 construction be in compliance with applicable building  
1952 construction codes.

1953           (5) (a) An electrical power plant certified pursuant to  
1954 this act shall comply with rules adopted by the department  
1955 subsequent to the issuance of the certification which prescribe  
1956 new or stricter criteria, to the extent that the rules are  
1957 applicable to electrical power plants. Except when express  
1958 variances, exceptions, exemptions, or other relief have been  
1959 granted, subsequently adopted rules which prescribe new or  
1960 stricter criteria shall operate as automatic modifications to  
1961 certifications.

1962           (b) Upon written notification to the department, any  
1963 holder of a certification issued pursuant to this act may choose

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1964 to operate the certified electrical power plant in compliance  
1965 with any rule subsequently adopted by the department which  
1966 prescribes criteria more lenient than the criteria required by  
1967 the terms and conditions in the certification which are not  
1968 site-specific.

1969 (c) No term or condition of certification shall be  
1970 interpreted to preclude the postcertification exercise by any  
1971 party of whatever procedural rights it may have under chapter  
1972 120, including those related to rulemaking proceedings. This  
1973 subsection shall apply to previously issued certifications.

1974 (6) No term or condition of a site certification shall be  
1975 interpreted to supersede or control the provisions of a final  
1976 operation permit for a major source of air pollution issued by  
1977 the department pursuant to s. 403.0872 to a such facility  
1978 certified under this part.

1979 (7) Pursuant to s. 380.23, electrical power plants are  
1980 subject to the federal coastal consistency review program.  
1981 Issuance of certification shall constitute the state's  
1982 certification of coastal zone consistency.

1983 Section 32. Section 403.5112, Florida Statutes, is created  
1984 to read:

1985 403.5112 Filing of notice of certified corridor route.--

1986 (1) Within 60 days after certification of a directly  
1987 associated linear facility pursuant to this act, the applicant  
1988 shall file, in accordance with s. 28.222, with the department  
1989 and the clerk of the circuit court for each county through which  
1990 the corridor will pass, a notice of the certified route.

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(2) The notice shall consist of maps or aerial photographs in the scale of 1:24,000 which clearly show the location of the certified route and shall state that the certification of the corridor will result in the acquisition of rights-of-way within the corridor. Each clerk shall record the filing in the official record of the county for the duration of the certification or until such time as the applicant certifies to the department and the clerk that all lands required for the transmission line rights-of-way within the corridor have been acquired within such county, whichever is sooner.

Section 33. Section 403.5113, Florida Statutes, is created to read:

403.5113 Postcertification amendments.--

(1) If, subsequent to certification by the board, a licensee proposes any material change to the application and revisions or amendments thereto, as certified, the licensee shall submit a written request for amendment and a description of the proposed change to the application to the department. Within 30 days after the receipt of the request for the amendment, the department shall determine whether the proposed change to the application requires a modification of the conditions of certification.

(2) If the department concludes that the change would not require a modification of the conditions of certification, the department shall provide written notification of the approval of the proposed amendment to the licensee, all agencies, and all other parties.

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(3) If the department concludes that the change would require a modification of the conditions of certification, the department shall provide written notification to the licensee that the proposed change to the application requires a request for modification pursuant to s. 403.516.

Section 34. Section 403.5115, Florida Statutes, is amended to read:

403.5115 Public notice; costs of proceeding.--

(1) The following notices are to be published by the applicant:

(a) Notice ~~A notice~~ of the filing of a notice of intent under s. 403.5063, which shall be published within 21 days after the filing of the notice. The notice shall be published as specified by subsection (2), except that the newspaper notice shall be one-fourth page in size in a standard size newspaper or one-half page in size in a tabloid size newspaper.

(b) Notice ~~A notice~~ of filing of the application, which shall include a description of the proceedings required by this act, within 21 days after the date of the application filing be published as specified in subsection (2), within 15 days after the application has been determined complete. Such notice shall give notice of the provisions of s. 403.511(1) and (2) ~~and that the application constitutes a request for a federally required new source review or prevention of significant deterioration permit.~~

(c) Notice of the land use determination made pursuant to s. 403.50665(1) within 15 days after the determination is filed.

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(d) Notice of the land use hearing, which shall be published as specified in subsection (2), no later than 15 ~~45~~ days before the hearing.

~~(e)~~ (d) Notice of the certification hearing and notice of the deadline for filing notice of intent to be a party, which shall be published as specified in subsection (2), at least 65 days before the date set for the certification ~~no later than 45 days before the hearing.~~

(f) Notice of the cancellation of the certification hearing, if applicable, no later than 3 days before the date of the originally scheduled certification hearing.

~~(g)~~ (e) Notice of modification when required by the department, based on whether the requested modification of certification will significantly increase impacts to the environment or the public. Such notice shall be published as specified under subsection (2):

1. Within 21 days after receipt of a request for modification, ~~except that~~ The newspaper notice shall be of a size as directed by the department commensurate with the scope of the modification.

2. If a hearing is to be conducted in response to the request for modification, then notice shall be published no later than 30 days before the hearing ~~provided as specified in paragraph (d).~~

~~(h)~~ (f) Notice of a supplemental application, which shall be published as specified in paragraph (b) and subsection (2). ~~follows:~~

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2072        ~~1. Notice of receipt of the supplemental application shall~~  
2073 ~~be published as specified in paragraph (b).~~

2074        ~~2. Notice of the certification hearing shall be published~~  
2075 ~~as specified in paragraph (d).~~

2076        (i) Notice of existing site certification pursuant to s.  
2077 403.5175. Notices shall be published as specified in paragraph  
2078 (b) and subsection (2).

2079        (2) Notices provided by the applicant shall be published  
2080 in newspapers of general circulation within the county or  
2081 counties in which the proposed electrical power plant will be  
2082 located. The newspaper notices shall be at least one-half page  
2083 in size in a standard size newspaper or a full page in a tabloid  
2084 size newspaper ~~and published in a section of the newspaper other~~  
2085 ~~than the legal notices section.~~ These notices shall include a  
2086 map generally depicting the project and all associated  
2087 facilities corridors. A newspaper of general circulation shall  
2088 be the newspaper which has the largest daily circulation in that  
2089 county and has its principal office in that county. If the  
2090 newspaper with the largest daily circulation has its principal  
2091 office outside the county, the notices shall appear in both the  
2092 newspaper having the largest circulation in that county and in a  
2093 newspaper authorized to publish legal notices in that county.

2094        (3) All notices published by the applicant shall be paid  
2095 for by the applicant and shall be in addition to the application  
2096 fee.

2097        (4) The department shall arrange for publication of the  
2098 following notices in the manner specified by chapter 120 and  
2099 provide copies of those notices to any persons who have

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2100 requested to be placed on the departmental mailing list for this  
2101 purpose:

2102       (a) Notice ~~Publish in the Florida Administrative Weekly~~  
2103 ~~notices~~ of the filing of the notice of intent within 15 days  
2104 after receipt of the notice.†

2105       (b) Notice of the filing of the application, no later than  
2106 21 days after the application filing.†

2107       (c) Notice of the land use determination made pursuant to  
2108 s. 403.50665(1) within 15 days after the determination is filed.

2109       (d) Notice of the land use hearing before the  
2110 administrative law judge, if applicable, no later than 15 days  
2111 before the hearing.†

2112       (e) Notice of the land use hearing before the board, if  
2113 applicable.

2114       (f) Notice of the certification hearing at least 45 days  
2115 before the date set for the certification hearing.†

2116       (g) Notice of the cancellation of the certification  
2117 hearing, if applicable, no later than 3 days prior to the date  
2118 of the originally scheduled certification hearing.

2119       (h) Notice of the hearing before the board, if  
2120 applicable.†

2121       (i) Notice and of stipulations, proposed agency action, or  
2122 petitions for modification.† and

2123       ~~(b) Provide copies of these notices to any persons who~~  
2124 ~~have requested to be placed on the departmental mailing list for~~  
2125 ~~this purpose.~~



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2126        ~~(5) The applicant shall pay those expenses and costs~~  
2127        ~~associated with the conduct of the hearings and the recording~~  
2128        ~~and transcription of the proceedings.~~

2129        Section 35. Section 403.513, Florida Statutes, is amended  
2130        to read:

2131        403.513 Review.--Proceedings under this act shall be  
2132        subject to judicial review as provided in chapter 120. When  
2133        possible, separate appeals of the certification order issued by  
2134        the board and of any department permit issued pursuant to a  
2135        federally delegated or approved permit program may ~~shall~~ be  
2136        consolidated for purposes of judicial review.

2137        Section 36. Section 403.516, Florida Statutes, is amended  
2138        to read:

2139        403.516 Modification of certification.--

2140        (1) A certification may be modified after issuance in any  
2141        one of the following ways:

2142        (a) The board may delegate to the department the authority  
2143        to modify specific conditions in the certification.

2144        (b)1. The department may modify specific conditions of a  
2145        site certification which are inconsistent with the terms of any  
2146        federally delegated or approved ~~final air pollution operation~~  
2147        ~~permit for the certified electrical power plant issued by the~~  
2148        ~~United States Environmental Protection Agency under the terms of~~  
2149        ~~42 U.S.C. s. 7661d.~~

2150        2. Such modification may be made without further notice if  
2151        the matter has been previously noticed under the requirements  
2152        for any federally delegated or approved permit program.

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2153            (c) The licensee may file a petition for modification with  
2154 the department, or the department may initiate the modification  
2155 upon its own initiative.

2156            1. A petition for modification must set forth:

2157            a. The proposed modification.

2158            b. The factual reasons asserted for the modification.

2159            c. The anticipated environmental effects of the proposed  
2160 modification.

2161            2.(b) The department may modify the terms and conditions  
2162 of the certification if no party to the certification hearing  
2163 objects in writing to such modification within 45 days after  
2164 notice by mail to such party's last address of record, and if no  
2165 other person whose substantial interests will be affected by the  
2166 modification objects in writing within 30 days after issuance of  
2167 public notice.

2168            3. If objections are raised or the department denies the  
2169 request, the applicant or department may file a request petition  
2170 for a hearing on the modification with the department. Such  
2171 request shall be handled pursuant to chapter 120 paragraph (e).

2172            ~~(c) A petition for modification may be filed by the~~  
2173 ~~applicant or the department setting forth:~~

2174            ~~1. The proposed modification,~~

2175            ~~2. The factual reasons asserted for the modification, and~~

2176            ~~3. The anticipated effects of the proposed modification on~~  
2177 ~~the applicant, the public, and the environment.~~

2178

2179            ~~The petition for modification shall be filed with the department~~  
2180 ~~and the Division of Administrative Hearings.~~

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2181           4. Requests referred to the Division of Administrative  
2182 Hearings shall be disposed of in the same manner as an  
2183 application, but with time periods established by the  
2184 administrative law judge commensurate with the significance of  
2185 the modification requested.

2186           (d) As required by s. 403.511(5).

2187           ~~(2) Petitions filed pursuant to paragraph (1)(c) shall be~~  
2188 ~~disposed of in the same manner as an application, but with time~~  
2189 ~~periods established by the administrative law judge commensurate~~  
2190 ~~with the significance of the modification requested.~~

2191           (2)(3) Any agreement or modification under this section  
2192 must be in accordance with the terms of this act. No  
2193 modification to a certification shall be granted that  
2194 constitutes a variance from standards or regulations of the  
2195 department applicable under any federally delegated or approved  
2196 permit program, except as expressly allowed in such program.

2197           Section 37. Section 403.517, Florida Statutes, is amended  
2198 to read:

2199           403.517 Supplemental applications for sites certified for  
2200 ultimate site capacity.--

2201           (1)(a) Supplemental ~~The department shall adopt rules~~  
2202 ~~governing the processing of supplemental applications may be~~  
2203 submitted for certification of the construction and operation of  
2204 electrical power plants to be located at sites which have been  
2205 previously certified for an ultimate site capacity pursuant to  
2206 this act. Supplemental applications shall be limited to  
2207 electrical power plants using the fuel type previously certified  
2208 for that site. Such applications shall include all new directly

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2209   associated facilities that support the construction and  
 2210   operation of the electrical power plant. The rules adopted  
 2211   ~~pursuant to this section shall include provisions for:~~  
 2212       ~~1. Prompt appointment of a designated administrative law~~  
 2213   ~~judge.~~  
 2214       ~~2. The contents of the supplemental application.~~  
 2215       ~~3. Resolution of disputes as to the completeness and~~  
 2216   ~~sufficiency of supplemental applications by the designated~~  
 2217   ~~administrative law judge.~~  
 2218       ~~4. Public notice of the filing of the supplemental~~  
 2219   ~~applications.~~  
 2220       ~~5. Time limits for prompt processing of supplemental~~  
 2221   ~~applications.~~  
 2222       ~~6. Final disposition by the board within 215 days of the~~  
 2223   ~~filing of a complete supplemental application.~~  
 2224       (b)   The review shall use the same procedural steps and  
 2225   notices as for an initial application.  
 2226       (c)   The time limits for the processing of a complete  
 2227   supplemental application shall be designated by the department  
 2228   commensurate with the scope of the supplemental application, but  
 2229   shall not exceed any time limitation governing the review of  
 2230   initial applications for site certification pursuant to this  
 2231   act, it being the legislative intent to provide shorter time  
 2232   limitations for the processing of supplemental applications for  
 2233   electrical power plants to be constructed and operated at sites  
 2234   which have been previously certified for an ultimate site  
 2235   capacity.

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(d) ~~(e)~~ Any time limitation in this section or in rules adopted pursuant to this section may be altered pursuant to s. 403.5095 ~~by the designated administrative law judge upon stipulation between the department and the applicant, unless objected to by any party within 5 days after notice, or for good cause shown by any party. The parties to the proceeding shall adhere to the provisions of chapter 120 and this act in considering and processing such supplemental applications.~~

(2) ~~Supplemental applications shall be reviewed as provided in ss. 403.507-403.511, except that the time limits provided in this section shall apply to such supplemental applications.~~

~~(3)~~ The land use and zoning consistency determination of s. 403.50665 ~~hearing requirements of s. 403.508(1) and (2)~~ shall not be applicable to the processing of supplemental applications pursuant to this section so long as:

(a) The previously certified ultimate site capacity is not exceeded; and

(b) The lands required for the construction or operation of the electrical power plant which is the subject of the supplemental application are within the boundaries of the previously certified site.

~~(4) For the purposes of this act, the term "ultimate site capacity" means the maximum generating capacity for a site as certified by the board.~~

Section 38. Section 403.5175, Florida Statutes, is amended to read:

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2263           403.5175 Existing electrical power plant site  
2264 certification.--  
2265           (1) An electric utility that owns or operates an existing  
2266 electrical power plant as defined in s. 403.503(12) may apply  
2267 for certification of an existing power plant and its site in  
2268 order to obtain all agency licenses necessary to ensure assure  
2269 compliance with federal or state environmental laws and  
2270 regulation using the centrally coordinated, one-stop licensing  
2271 process established by this part. An application for site  
2272 certification under this section must be in the form prescribed  
2273 by department rule. Applications must be reviewed and processed  
2274 using the same procedural steps and notices as for an  
2275 application for a new facility in accordance with ss. 403.5064-  
2276 403.5115, except that a determination of need by the Public  
2277 Service Commission is not required.  
2278           (2) An application for certification under this section  
2279 must include:  
2280           (a) A description of the site and existing power plant  
2281 installations;  
2282           (b) A description of all proposed changes or alterations  
2283 to the site or electrical power plant, including all new  
2284 associated facilities that are the subject of the application;  
2285           (c) A description of the environmental and other impacts  
2286 caused by the existing utilization of the site and directly  
2287 associated facilities, and the operation of the electrical power  
2288 plant that is the subject of the application, and of the  
2289 environmental and other benefits, if any, to be realized as a  
2290 result of the proposed changes or alterations if certification

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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2291 is approved and such other information as is necessary for the  
2292 reviewing agencies to evaluate the proposed changes and the  
2293 expected impacts;

2294 (d) The justification for the proposed changes or  
2295 alterations;

2296 (e) Copies of all existing permits, licenses, and  
2297 compliance plans authorizing utilization of the site and  
2298 directly associated facilities or operation of the electrical  
2299 power plant that is the subject of the application.

2300 (3) The land use and zoning determination ~~hearing~~  
2301 requirements of s. 403.50665 ~~s. 403.508(1) and (2)~~ do not apply  
2302 to an application under this section if the applicant does not  
2303 propose to expand the boundaries of the existing site. If the  
2304 applicant proposes to expand the boundaries of the existing site  
2305 to accommodate portions of the plant or associated facilities, a  
2306 land use and zoning determination shall be made ~~hearing must be~~  
2307 ~~held~~ as specified in s. 403.50665 ~~s. 403.508(1) and (2)~~;  
2308 provided, however, that the sole issue for determination ~~through~~  
2309 ~~the land use hearing~~ is whether the proposed site expansion is  
2310 consistent and in compliance with the existing land use plans  
2311 and zoning ordinances.

2312 (4) In considering whether an application submitted under  
2313 this section should be approved in whole, approved with  
2314 appropriate conditions, or denied, the board shall consider  
2315 whether, and to the extent to which the proposed changes to the  
2316 electrical power plant and its continued operation under  
2317 certification will:

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2318           (a) Comply with the provisions of s. 403.509(3).  
2319 ~~applicable nonprocedural requirements of agencies;~~  
2320           (b) Result in environmental or other benefits compared to  
2321 current utilization of the site and operations of the electrical  
2322 power plant if the proposed changes or alterations are  
2323 undertaken.  
2324           ~~(c) Minimize, through the use of reasonable and available~~  
2325 ~~methods, the adverse effects on human health, the environment,~~  
2326 ~~and the ecology of the land and its wildlife and the ecology of~~  
2327 ~~state waters and their aquatic life; and~~  
2328           ~~(d) Serve and protect the broad interests of the public.~~  
2329           (5) An applicant's failure to receive approval for  
2330 certification of an existing site or an electrical power plant  
2331 under this section is without prejudice to continued operation  
2332 of the electrical power plant or site under existing agency  
2333 licenses.  
2334           Section 39. Section 403.518, Florida Statutes, is amended  
2335 to read:  
2336           403.518 Fees; disposition.--  
2337           ~~(1)~~ The department shall charge the applicant the  
2338 following fees, as appropriate, which, unless otherwise  
2339 specified, shall be paid into the Florida Permit Fee Trust Fund:  
2340           (1)~~(a)~~ A fee for a notice of intent pursuant to s.  
2341 403.5063, in the amount of \$2,500, to be submitted to the  
2342 department at the time of filing of a notice of intent. The  
2343 notice-of-intent fee shall be used and disbursed in the same  
2344 manner as the application fee.



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2345        ~~(2)(b)~~ An application fee, which shall not exceed  
2346        \$200,000. The fee shall be fixed by rule on a sliding scale  
2347        related to the size, type, ultimate site capacity, or increase  
2348        in electrical generating capacity proposed by the application,  
2349        ~~or the number and size of local governments in whose~~  
2350        ~~jurisdiction the electrical power plant is located.~~

2351        ~~(a)1.~~ Sixty percent of the fee shall go to the department  
2352        to cover any costs associated with coordinating the review  
2353        ~~reviewing~~ and acting upon the application, to cover any field  
2354        services associated with monitoring construction and operation  
2355        of the facility, and to cover the costs of the public notices  
2356        published by the department.

2357        ~~(b)2.~~ The following percentages ~~Twenty percent of the fee~~  
2358        ~~or \$25,000, whichever is greater,~~ shall be transferred to the  
2359        Administrative Trust Fund of the Division of Administrative  
2360        Hearings of the Department of Management Services:-

2361        1. Five percent to compensate expenses from the initial  
2362        exercise of duties associated with the filing of an application.

2363        2. An additional 5 percent if a land use hearing is held  
2364        pursuant to s. 403.508.

2365        3. An additional 10 percent if a certification hearing is  
2366        held pursuant to s. 403.508.

2367        ~~(c)1.3.~~ Upon written request with proper itemized  
2368        accounting within 90 days after final agency action by the board  
2369        or withdrawal of the application, the agencies that prepared  
2370        reports pursuant to s. 403.507 or participated in a hearing  
2371        pursuant to s. 403.508 may submit a written request to the  
2372        department for reimbursement of expenses incurred during the

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2373     certification proceedings. The request shall contain an  
2374     accounting of expenses incurred which may include time spent  
2375     reviewing the application, the department shall reimburse the  
2376     Department of Community Affairs, the Fish and Wildlife  
2377     Conservation Commission, and any water management district  
2378     created pursuant to chapter 373, regional planning council, and  
2379     local government in the jurisdiction of which the proposed  
2380     electrical power plant is to be located, and any other agency  
2381     from which the department requests special studies pursuant to  
2382     s. 403.507(2)(a)7. Such reimbursement shall be authorized for  
2383     the preparation of any studies required of the agencies by this  
2384     act, and for agency travel and per diem to attend any hearing  
2385     held pursuant to this act, and for any agency or local  
2386     government's provision of notice of public meetings or hearings  
2387     required as a result of the application for certification  
2388     governments to participate in the proceedings. The department  
2389     shall review the request and verify that the expenses are valid.  
2390     Valid expenses shall be reimbursed; however, in the event the  
2391     amount of funds available for reimbursement allocation is  
2392     insufficient to provide for full compensation complete  
2393     reimbursement to the agencies requesting reimbursement,  
2394     reimbursement shall be on a prorated basis.

2395     2. If the application review is held in abeyance for more  
2396     than 1 year, the agencies may submit a request for  
2397     reimbursement.

2398     (d)4- If any sums are remaining, the department shall  
2399     retain them for its use in the same manner as is otherwise  
2400     authorized by this act; provided, however, that if the

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2401 certification application is withdrawn, the remaining sums shall  
2402 be refunded to the applicant within 90 days after withdrawal.

2403        (3) (a) (e) A certification modification fee, which shall  
2404 not exceed \$30,000. The department shall establish rules for  
2405 determining such a fee based on the equipment redesign, change  
2406 in site size, type, increase in generating capacity proposed, or  
2407 change in an associated linear facility location.

2408        (b) The fee shall be submitted to the department with a  
2409 ~~formal~~ petition for modification ~~to the department~~ pursuant to  
2410 s. 403.516. This fee shall be established, disbursed, and  
2411 processed in the same manner as the application fee in  
2412 subsection (2) paragraph (b), except that the Division of  
2413 Administrative Hearings shall not receive a portion of the fee  
2414 unless the petition for certification modification is referred  
2415 to the Division of Administrative Hearings for hearing. If the  
2416 petition is so referred, only \$10,000 of the fee shall be  
2417 transferred to the Administrative Trust Fund of the Division of  
2418 Administrative Hearings of the Department of Management  
2419 Services. ~~The fee for a modification by agreement filed pursuant~~  
2420 ~~to s. 403.516(1) (b) shall be \$10,000 to be paid upon the filing~~  
2421 ~~of the request for modification. Any sums remaining after~~  
2422 ~~payment of authorized costs shall be refunded to the applicant~~  
2423 ~~within 90 days of issuance or denial of the modification or~~  
2424 ~~withdrawal of the request for modification.~~

2425        (4) (d) A supplemental application fee, not to exceed  
2426 \$75,000, to cover all reasonable expenses and costs of the  
2427 review, processing, and proceedings of a supplemental  
2428 application. This fee shall be established, disbursed, and

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2429 processed in the same manner as the certification application  
2430 fee in subsection (2) paragraph (b), ~~except that only \$20,000 of~~  
2431 ~~the fee shall be transferred to the Administrative Trust Fund of~~  
2432 ~~the Division of Administrative Hearings of the Department of~~  
2433 ~~Management Services.~~

2434 (5)(e) An existing site certification application fee, not  
2435 to exceed \$200,000, to cover all reasonable costs and expenses  
2436 of the review processing and proceedings for certification of an  
2437 existing power plant site under s. 403.5175. This fee must be  
2438 established, disbursed, and processed in the same manner as the  
2439 certification application fee in subsection (2) paragraph (b).

2440 ~~(2) Effective upon the date commercial operation begins,~~  
2441 ~~the operator of an electrical power plant certified under this~~  
2442 ~~part is required to pay to the department an annual operation~~  
2443 ~~license fee as specified in s. 403.0872(11) to be deposited in~~  
2444 ~~the Air Pollution Control Trust Fund.~~

2445 Section 40. Any application for electrical power plant  
2446 certification filed pursuant to ss. 403.501-403.518, Florida  
2447 Statutes, shall be processed under the provisions of the law  
2448 applicable at the time the application was filed, except that  
2449 the provisions relating to cancellation of the certification  
2450 hearing under s. 403.508(6), Florida Statutes, the provisions  
2451 relating to the final disposition of the application and  
2452 issuance of the written order by the secretary under s.  
2453 403.509(1)(a), Florida Statutes, and notice of the cancellation  
2454 of the certification hearing under s. 403.5115, Florida  
2455 Statutes, may apply to any application for electrical power  
2456 plant certification.

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2457           Section 41.   Section 403.519, Florida Statutes, is amended  
2458 to read:

2459           403.519   Exclusive forum for determination of need.--

2460           (1)   On request by an applicant or on its own motion, the  
2461 commission shall begin a proceeding to determine the need for an  
2462 electrical power plant subject to the Florida Electrical Power  
2463 Plant Siting Act.

2464           (2)   The applicant ~~commission~~ shall publish a notice of the  
2465 proceeding in a newspaper of general circulation in each county  
2466 in which the proposed electrical power plant will be located.  
2467 The notice shall be at least one-quarter of a page and published  
2468 at least 21 ~~45~~ days prior to the scheduled date for the  
2469 proceeding. The commission shall publish notice of the  
2470 proceeding in the manner specified by chapter 120 at least 21  
2471 days prior to the scheduled date for the proceeding.

2472           (3)   The commission shall be the sole forum for the  
2473 determination of this matter, which accordingly shall not be  
2474 raised in any other forum or in the review of proceedings in  
2475 such other forum. In making its determination, the commission  
2476 shall take into account the need for electric system reliability  
2477 and integrity, the need for adequate electricity at a reasonable  
2478 cost, the need for fuel diversity and supply reliability, and  
2479 whether the proposed plant is the most cost-effective  
2480 alternative available. The commission shall also expressly  
2481 consider the conservation measures taken by or reasonably  
2482 available to the applicant or its members which might mitigate  
2483 the need for the proposed plant and other matters within its  
2484 jurisdiction which it deems relevant. The commission's

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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2485 determination of need for an electrical power plant shall create  
2486 a presumption of public need and necessity and shall serve as  
2487 the commission's report required by s. 403.507(4)  
2488 ~~403.507(2)(a)2.~~ An order entered pursuant to this section  
2489 constitutes final agency action.

2490       Section 42.   Section 403.885, Florida Statutes, is amended  
2491 to read:

2492       403.885   Water Projects ~~Stormwater management; wastewater~~  
2493 ~~management; and Water Restoration~~ Grant Program.--

2494       (1)   The Department of Environmental Protection shall  
2495 administer a grant program to use funds transferred pursuant to  
2496 s. 212.20 to the Ecosystem Management and Restoration Trust Fund  
2497 or other moneys as appropriated by the Legislature for water  
2498 quality improvement, stormwater management, wastewater  
2499 management, and water restoration project grants. Eligible  
2500 recipients of such grants include counties, municipalities,  
2501 water management districts, and special districts that have  
2502 legal responsibilities for water quality improvement, water  
2503 management, stormwater management, wastewater management, lake  
2504 and river water restoration projects, and drinking water  
2505 projects ~~are not eligible for funding~~ pursuant to this section.

2506       (2)   The grant program shall provide for the evaluation of  
2507 annual grant proposals. The department shall evaluate such  
2508 proposals to determine if they:

2509       (a)   Protect public health or ~~and~~ the environment.

2510       (b)   Implement plans developed pursuant to the Surface  
2511 Water Improvement and Management Act created in part IV of  
2512 chapter 373, other water restoration plans required by law,

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2513 management plans prepared pursuant to s. 403.067, or other plans  
2514 adopted by local government for water quality improvement and  
2515 water restoration.

2516 ~~(3) In addition to meeting the criteria in subsection (2),~~  
2517 ~~annual grant proposals must also meet the following~~  
2518 ~~requirements:~~

2519 ~~(a) An application for a stormwater management project may~~  
2520 ~~be funded only if the application is approved by the water~~  
2521 ~~management district with jurisdiction in the project area.~~  
2522 ~~District approval must be based on a determination that the~~  
2523 ~~project provides a benefit to a priority water body.~~

2524 ~~(b) Except as provided in paragraph (c), an application~~  
2525 ~~for a wastewater management project may be funded only if:~~

2526 ~~1. The project has been funded previously through a line~~  
2527 ~~item in the General Appropriations Act; and~~

2528 ~~2. The project is under construction.~~

2529 ~~(c) An application for a wastewater management project~~  
2530 ~~that would qualify as a water pollution control project and~~  
2531 ~~activity in s. 403.1838 may be funded only if the project~~  
2532 ~~sponsor has submitted an application to the department for~~  
2533 ~~funding pursuant to that section.~~

2534 ~~(4) All project applicants must provide local matching~~  
2535 ~~funds as follows:~~

2536 ~~(a) An applicant for state funding of a stormwater~~  
2537 ~~management project shall provide local matching funds equal to~~  
2538 ~~at least 50 percent of the total cost of the project; and~~

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2539       ~~(b) An applicant for state funding of a wastewater~~  
2540       ~~management project shall provide matching funds equal to at~~  
2541       ~~least 25 percent of the total cost of the project.~~  
2542  
2543       ~~The requirement for matching funds may be waived if the~~  
2544       ~~applicant is a financially disadvantaged small local government~~  
2545       ~~as defined in subsection (5).~~  
2546       ~~(5) Each fiscal year, at least 20 percent of the funds~~  
2547       ~~available pursuant to this section shall be used for projects to~~  
2548       ~~assist financially disadvantaged small local governments. For~~  
2549       ~~purposes of this section, the term "financially disadvantaged~~  
2550       ~~small local government" means a municipality having a population~~  
2551       ~~of 7,500 or less, a county having a population of 35,000 or~~  
2552       ~~less, according to the latest decennial census and a per capita~~  
2553       ~~annual income less than the state per capita annual income as~~  
2554       ~~determined by the United States Department of Commerce, or a~~  
2555       ~~county in an area designated by the Governor as a rural area of~~  
2556       ~~critical economic concern pursuant to s. 288.0656. Grants made~~  
2557       ~~to these eligible local governments shall not require matching~~  
2558       ~~local funds.~~  
2559       ~~(6) Each year, stormwater management and wastewater~~  
2560       ~~management projects submitted for funding through the~~  
2561       ~~legislative process shall be submitted to the department by the~~  
2562       ~~appropriate fiscal committees of the House of Representatives~~  
2563       ~~and the Senate. The department shall review the projects and~~  
2564       ~~must provide each fiscal committee with a list of projects that~~  
2565       ~~appear to meet the eligibility requirements under this grant~~  
2566       ~~program.~~



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2567           Section 43.   For the 2006-2007 fiscal year, the sum of  
2568   \$61,379 is appropriated from the General Revenue Fund to the  
2569   Department of Revenue for the purpose of administering the  
2570   energy-efficient products sales tax holiday.

2571           Section 44.   This act shall take effect upon becoming a  
2572   law.

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Bill No. 1473

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Commerce Council  
Representative Hasner offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Legislative findings and intent.--The  
Legislature finds that advancing the development of renewable  
energy technologies and energy efficiency is important for the  
state's future, its energy stability, and the protection of its  
citizens' public health and its environment. The Legislature  
finds that the development of renewable energy technologies and  
energy efficiency in the state will help to reduce demand for  
foreign fuels, promote energy diversity, enhance system  
reliability, reduce pollution, educate the public on the promise  
of renewable energy technologies, and promote economic growth.  
The Legislature finds that there is a need to assist in the  
development of market demand that will advance the  
commercialization and widespread application of renewable energy  
technologies. The Legislature further finds that the state is  
ideally positioned to stimulate economic development through  
such renewable energy technologies due to its ongoing and

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23 successful research and development track record in these areas,  
24 an abundance of natural and renewable energy sources, an ability  
25 to attract significant federal research and development funds,  
26 and the need to find and secure renewable energy technologies  
27 for the benefit of its citizens, visitors, and environment.

28 Section 2. Section 377.801, Florida Statutes, is created  
29 to read:

30 377.801 Short title.--Sections 377.801-377.806 may be  
31 cited as the "Florida Renewable Energy Technologies and Energy  
32 Efficiency Act."

33 Section 3. Section 377.802, Florida Statutes, is created  
34 to read:

35 377.802 Purpose.--This act is intended to provide matching  
36 grants to stimulate capital investment in the state and to  
37 enhance the market for and promote the statewide utilization of  
38 renewable energy technologies. The targeted grants program is  
39 designed to advance the already growing establishment of  
40 renewable energy technologies in the state and encourage the use  
41 of other incentives such as tax exemptions and regulatory  
42 certainty to attract additional renewable energy technology  
43 producers, developers, and users to the state. This act is also  
44 intended to provide incentives for the purchase of energy-  
45 efficient appliances and rebates for solar energy equipment  
46 installations for residential and commercial buildings.

47 Section 4. Section 377.803, Florida Statutes, is created  
48 to read:

49 377.803 Definitions.--As used in ss. 377.801-377.806, the  
50 term:

51 (1) "Act" means the Florida Renewable Energy Technologies  
52 and Energy Efficiency Act.

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53        (2) "Approved metering equipment" means a device capable  
54 of measuring the energy output of a solar thermal system that  
55 has been approved by the commission.

56        (3) "Commission" means the Florida Public Service  
57 Commission.

58        (4) "Department" means the Department of Environmental  
59 Protection.

60        (5) "Person" means an individual, partnership, joint  
61 venture, private or public corporation, association, firm,  
62 public service company, or any other public or private entity.

63        (6) "Renewable energy" means electrical, mechanical, or  
64 thermal energy produced from a method that uses one or more of  
65 the following fuels or energy sources: hydrogen, biomass, solar  
66 energy, geothermal energy, wind energy, ocean energy, waste  
67 heat, or hydroelectric power.

68        (7) "Renewable energy technology" means any technology  
69 that generates or utilizes a renewable energy resource.

70        (8) "Solar energy system" means equipment that provides  
71 for the collection and use of incident solar energy for water  
72 heating, space heating or cooling, or other applications that  
73 would normally require a conventional source of energy such as  
74 petroleum products, natural gas, or electricity that performs  
75 primarily with solar energy. In other systems in which solar  
76 energy is used in a supplemental way, only those components that  
77 collect and transfer solar energy shall be included in this  
78 definition.

79        (9) "Solar photovoltaic system" means a device that  
80 converts incident sunlight into electrical current.

81        (10) "Solar thermal system" means a device that traps heat  
82 from incident sunlight in order to heat water.

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Section 5. Section 377.804, Florida Statutes, is created to read:

377.804 Renewable Energy Technologies Grants Program.--

(1) The Renewable Energy Technologies Grants Program is established within the department to provide renewable energy matching grants for demonstration, commercialization, research, and development projects relating to renewable energy technologies.

(2) Matching grants for renewable energy technology demonstration, commercialization, research, and development projects may be made to any of the following:

(a) Municipalities and county governments.

(b) Established for-profit companies licensed to do business in the state.

(c) Universities and colleges in the state.

(d) Utilities located and operating within the state.

(e) Not-for-profit organizations.

(f) Other qualified persons, as determined by the department.

(3) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to provide for application requirements, provide for ranking of applications, and administer the awarding of grants under this program.

(4) Factors the department shall consider in awarding grants include, but are not limited to:

(a) The availability of matching funds or other in-kind contributions applied to the total project from an applicant. The department shall give greater preference to projects that provide such matching funds or other in-kind contributions.

(b) The degree to which the project stimulates in-state capital investment and economic development in metropolitan and

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114 rural areas, including the creation of jobs and the future  
115 development of a commercial market for renewable energy  
116 technologies.

117 (c) The extent to which the proposed project has been  
118 demonstrated to be technically feasible based on pilot project  
119 demonstrations, laboratory testing, scientific modeling, or  
120 engineering or chemical theory that supports the proposal.

121 (d) The degree to which the project incorporates an  
122 innovative new technology or an innovative application of an  
123 existing technology.

124 (e) The degree to which a project generates thermal,  
125 mechanical, or electrical energy by means of a renewable energy  
126 resource that has substantial long-term production potential.

127 (f) The degree to which a project demonstrates efficient  
128 use of energy and material resources.

129 (g) The degree to which the project fosters overall  
130 understanding and appreciation of renewable energy technologies.

131 (h) The ability to administer a complete project.

132 (i) Project duration and timeline for expenditures.

133 (j) The geographic area in which the project is to be  
134 conducted in relation to other projects.

135 (k) The degree of public visibility and interaction.

136 (5) The department shall solicit the expertise of other  
137 state agencies in evaluating project proposals. State agencies  
138 shall cooperate with the Department of Environmental Protection  
139 and provide such assistance as requested.

140 (6) The department shall coordinate and actively consult  
141 with the Department of Agriculture and Consumer Services during  
142 the review and approval process of grants relating to bioenergy  
143 projects for renewable energy technology, and the departments  
144 shall jointly determine the grant awards to these bioenergy

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145 projects. No grant funding shall be awarded to any bioenergy  
146 project without such joint approval. Factors for consideration  
147 in awarding grants may include, but are not limited to, the  
148 degree to which:

149 (a) The project stimulates in-state capital investment and  
150 economic development in metropolitan and rural areas, including  
151 the creation of jobs and the future development of a commercial  
152 market for bioenergy.

153 (b) The project produces bioenergy from Florida-grown  
154 crops or biomass.

155 (c) The project demonstrates efficient use of energy and  
156 material resources.

157 (d) The project fosters overall understanding and  
158 appreciation of bioenergy technologies.

159 (e) Matching funds and in-kind contributions from an  
160 applicant are available.

161 (f) The project duration and the timeline for expenditures  
162 are acceptable.

163 (g) The project has a reasonable assurance of enhancing  
164 the value of agricultural products or will expand agribusiness  
165 in the state.

166 (h) Preliminary market and feasibility research has been  
167 conducted by the applicant or others and shows there is a  
168 reasonable assurance of a potential market.

169 Section 6. Section 377.805, Florida Statutes, is created  
170 to read:

171 377.805 Energy-efficient products sales tax holiday.--The  
172 period from 12:01 a.m., October 5, through midnight, October 11,  
173 2006, shall be designated "Energy Efficient Week," and the tax  
174 levied under chapter 212 may not be collected on the sale of a  
175 new energy-efficient product having a selling price of \$1,500 or

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176 less per product during that period. This exemption applies only  
177 when the energy-efficient product is purchased for noncommercial  
178 home or personal use and does not apply when the product is  
179 purchased for trade, business, or resale. As used in this  
180 section, the term "energy-efficient product" means a dishwasher,  
181 clothes washer, air conditioner, ceiling fan, incandescent or  
182 florescent light bulb, dehumidifier, programmable thermostat, or  
183 refrigerator that has been designated by the United States  
184 Environmental Protection Agency or by the United States  
185 Department of Energy as meeting or exceeding the requirements  
186 under the Energy Star Program of either agency. Purchases made  
187 under this section may not be made using a business or company  
188 credit or debit card or check. Any construction company,  
189 building contractor, or commercial business or entity that  
190 purchases or attempts to purchase the energy-efficient products  
191 as exempt under this section commits an unfair method of  
192 competition in violation of s. 501.204, punishable as provided  
193 in s. 501.2075.

194 Section 7. Section 377.806, Florida Statutes, is created  
195 to read:

196 377.806 Solar Energy System Incentives Program.--

197 (1) PURPOSE.--The Solar Energy System Incentives Program  
198 is established within the department to provide financial  
199 incentives for the purchase and installation of solar energy  
200 systems. Any resident of the state who purchases and installs a  
201 new solar energy system of 2 kilowatts or larger for a solar  
202 photovoltaic system, a solar energy system that provides at  
203 least 50 percent of a building's hot water consumption for a  
204 solar thermal system, or a solar thermal pool heater, from July  
205 1, 2006, through June 30, 2010, is eligible for a rebate on a  
206 portion of the purchase price of that solar energy system.



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(2) SOLAR PHOTOVOLTAIC SYSTEM INCENTIVE.--

(a) Eligibility requirements.--A solar photovoltaic system qualifies for a rebate if:

1. The system is installed by a state-licensed master electrician, electrical contractor, or solar contractor.

2. The system complies with state interconnection standards as provided by the commission.

3. The system complies with all applicable building codes as defined by the local jurisdictional authority.

(b) Rebate amounts.--The rebate amount shall be set at \$4 per watt based on the total wattage rating of the system. The maximum allowable rebate per solar photovoltaic system installation shall be as follows:

1. Twenty thousand dollars for a residence.

2. One hundred thousand dollars for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization, including condominiums or apartment buildings.

(3) SOLAR THERMAL SYSTEM INCENTIVE.--

(a) Eligibility requirements.--A solar thermal system qualifies for a rebate if:

1. The system is installed by a state-licensed solar or plumbing contractor.

2. The system complies with all applicable building codes as defined by the local jurisdictional authority.

(b) Rebate amounts.--Authorized rebates for installation of solar thermal systems shall be as follows:

1. Five hundred dollars for a residence.

2. Fifteen dollars per 1,000 Btu up to a maximum of \$5,000 for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit

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organization, including condominiums or apartment buildings. Btu must be verified by approved metering equipment.

(4) SOLAR THERMAL POOL HEATER INCENTIVE.--

(a) Eligibility requirements.--A solar thermal pool heater qualifies for a rebate if the system is installed by a state-licensed solar or plumbing contractor and the system complies with all applicable building codes as defined by the local jurisdictional authority.

(b) Rebate amount.--Authorized rebates for installation of solar thermal pool heaters shall be \$100 per installation.

(5) APPLICATION.--Application for a rebate must be made within 90 days after the purchase of the solar energy equipment.

(6) REBATE AVAILABILITY.--The department shall determine and publish on a regular basis the amount of rebate funds remaining in each fiscal year. The total dollar amount of all rebates issued by the department is subject to the total amount of appropriations in any fiscal year for this program. If funds are insufficient during the current fiscal year, any requests for rebates received during that fiscal year may be processed during the following fiscal year. Requests for rebates received in a fiscal year that are processed during the following fiscal year shall be given priority over requests for rebates received during the following fiscal year.

(7) RULES.--The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to develop rebate applications and administer the issuance of rebates.

Section 8. Section 377.901, Florida Statutes, is created to read:

377.901 Florida Energy Council.--

(1) The Florida Energy Council is created within the Department of Environmental Protection to provide advice and

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269 counsel to the Governor, the President of the Senate, and the  
270 Speaker of the House of Representatives on the energy policy of  
271 the state. The council shall advise the state on current and  
272 projected energy issues, including, but not limited to,  
273 transportation, generation, transmission, distributed  
274 generation, fuel supply issues, emerging technologies,  
275 efficiency, and conservation. In developing its recommendations,  
276 the council shall be guided by the principles of reliability,  
277 efficiency, affordability, and diversity.

278 (2)(a) The council shall be comprised of a diversity of  
279 stakeholders and may include utility providers, alternative  
280 energy providers, researchers, environmental scientists, fuel  
281 suppliers, technology manufacturers, persons representing  
282 environmental, consumer, and public health interests, and  
283 others.

284 (b) The council shall consist of nine voting members as  
285 follows:

286 1. The Secretary of Environmental Protection, or his or  
287 her designee, who shall serve as chair of the council.

288 2. The chair of the Public Service Commission, or his or  
289 her designee, who shall serve as vice chair of the council.

290 3. One member shall be the Commissioner of Agriculture, or  
291 his or her designee.

292 4. Two members who shall be appointed by the Governor.

293 5. Two members who shall be appointed by the President of  
294 the Senate.

295 6. Two members who shall be appointed by the Speaker of  
296 the House of Representatives.

297 (c) All initial members shall be appointed prior to  
298 September 1, 2006. Appointments made by the Governor, the  
299 President of the Senate, and the Speaker of the House of

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Representatives shall be for terms of 2 years each. Members shall serve until their successors are appointed. Vacancies shall be filled in the manner of the original appointment for the remainder of the term that is vacated.

(d) Members shall serve without compensation but are entitled to reimbursement for travel expenses and per diem related to council duties and responsibilities pursuant to s. 112.061.

(3) The Department of Environmental Protection shall provide primary staff support to the council and shall ensure that council meetings are electronically recorded. Such recording shall be preserved pursuant to chapters 119 and 257.

(4) The Department of Environmental Protection may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section.

Section 9. Paragraph (ccc) is added to subsection (7) of section 212.08, Florida Statutes, to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.--The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is

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otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(ccc) Equipment, machinery, and other materials for renewable energy technologies.--

1. As used in this paragraph, the term:

a. "Biodiesel" means the mono-alkyl esters of long-chain fatty acids derived from plant or animal matter for use as a source of energy and meeting the specifications for biodiesel and biodiesel blends with petroleum products as adopted by the Department of Agriculture and Consumer Services. Biodiesel may refer to biodiesel blends designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend.

b. "Ethanol" means nominally anhydrous denatured alcohol produced by the fermentation of plant sugars meeting the specifications for fuel ethanol and fuel ethanol blends with petroleum products as adopted by the Department of Agriculture and Consumer Services. Ethanol may refer to fuel ethanol blends designated EXX, where XX represents the volume percentage of fuel ethanol in the blend.

c. "Hydrogen fuel cells" means equipment using hydrogen or a hydrogen-rich fuel in an electrochemical process to generate energy, electricity, or the transfer of heat.

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2. The sale or use of the following in the state is exempt from the tax imposed by this chapter:

a. Hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations, up to a limit of \$2 million in tax each state fiscal year for all taxpayers.

b. Commercial stationary hydrogen fuel cells, up to a limit of \$1 million in tax each state fiscal year for all taxpayers.

c. Materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-100), including fueling infrastructure, transportation, and storage, up to a limit of \$1 million in tax each state fiscal year for all taxpayers. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify for the exemption provided in this sub-subparagraph.

3. The Department of Environmental Protection shall provide to the department a list of items eligible for the exemption provided in this paragraph.

4.a. The exemption provided in this paragraph shall be available to a purchaser only through a refund of previously paid taxes.

b. To be eligible to receive the exemption provided in this paragraph, a purchaser shall file an application with the Department of Environmental Protection. The application shall be developed by the Department of Environmental Protection, in consultation with the department, and shall require:

(I) The name and address of the person claiming the refund.

(II) A specific description of the purchase for which a refund is sought, including, when applicable, a serial number or other permanent identification number.

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392        (III) The sales invoice or other proof of purchase showing  
393 the amount of sales tax paid, the date of purchase, and the name  
394 and address of the sales tax dealer from whom the property was  
395 purchased.

396        (IV) A sworn statement that the information provided is  
397 accurate and that the requirements of this paragraph have been  
398 met.

399        c. Within 30 days after receipt of an application, the  
400 Department of Environmental Protection shall review the  
401 application and shall notify the applicant of any deficiencies.  
402 Upon receipt of a completed application, the Department of  
403 Environmental Protection shall evaluate the application for  
404 exemption and issue a written certification that the applicant  
405 is eligible for a refund or issue a written denial of such  
406 certification within 60 days after receipt of the application.  
407 The Department of Environmental Protection shall provide the  
408 department with a copy of each certification issued upon  
409 approval of an application.

410        d. Each certified applicant shall be responsible for  
411 forwarding a certified copy of the application and copies of all  
412 required documentation to the department within 6 months after  
413 certification by the Department of Environmental Protection.

414        e. The provisions of s. 212.095 do not apply to any refund  
415 application made pursuant to this paragraph. A refund approved  
416 pursuant to this paragraph shall be made within 30 days after  
417 formal approval by the department.

418        f. The department shall adopt rules governing the manner  
419 and form of refund applications and may establish guidelines as  
420 to the requisites for an affirmative showing of qualification  
421 for exemption under this paragraph.

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g. The Department of Environmental Protection shall be responsible for ensuring that the exemptions do not exceed the limits provided in subparagraph 2.

5. The Department of Environmental Protection shall determine and publish on a regular basis the amount of sales tax funds remaining in each fiscal year.

6. This paragraph expires July 1, 2010.

Section 10. Paragraph (y) is added to subsection (7) of section 213.053, Florida Statutes, to read:

213.053 Confidentiality and information sharing.--

(7) Notwithstanding any other provision of this section, the department may provide:

(y) Information relative to ss. 212.08(7)(ccc) and 220.192 to the Department of Environmental Protection for use in the conduct of its official business.

Disclosure of information under this subsection shall be pursuant to a written agreement between the executive director and the agency. Such agencies, governmental or nongovernmental, shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

Section 11. Subsection (8) of section 220.02, Florida Statutes, is amended to read:

220.02 Legislative intent.--

(8) It is the intent of the Legislature that credits against either the corporate income tax or the franchise tax be applied in the following order: those enumerated in s. 631.828, those enumerated in s. 220.191, those enumerated in s. 220.181, those enumerated in s. 220.183, those enumerated in s. 220.182,



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those enumerated in s. 220.1895, those enumerated in s. 221.02,  
those enumerated in s. 220.184, those enumerated in s. 220.186,  
those enumerated in s. 220.1845, those enumerated in s. 220.19,  
those enumerated in s. 220.185, ~~and~~ those enumerated in s.  
220.187, and those enumerated in ss. 220.192 and 220.193.

Section 12. Section 220.192, Florida Statutes, is created  
to read:

220.192 Renewable energy technologies investment tax  
credit.--

(1) DEFINITIONS.--For purposes of this section, the term:

(a) "Biodiesel" means biodiesel as defined in s.  
212.08(7)(ccc).

(b) "Eligible costs" means:

1. Seventy-five percent of all capital costs, operation  
and maintenance costs, and research and development costs  
incurred between July 1, 2006, and June 30, 2010, up to a limit  
of \$3 million per state fiscal year for all taxpayers, in  
connection with an investment in hydrogen-powered vehicles and  
hydrogen vehicle fueling stations in the state, including, but  
not limited to, the costs of constructing, installing, and  
equipping such technologies in the state.

2. Seventy-five percent of all capital costs, operation  
and maintenance costs, and research and development costs  
incurred between July 1, 2006, and June 30, 2010, up to a limit  
of \$1.5 million per state fiscal year for all taxpayers, and  
limited to a maximum of \$12,000 per fuel cell, in connection  
with an investment in commercial stationary hydrogen fuel cells  
in the state, including, but not limited to, the costs of  
constructing, installing, and equipping such technologies in the  
state.

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3. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of \$6.5 million per state fiscal year for all taxpayers, in connection with an investment in the production, storage, and distribution of biodiesel (B10-B100) and ethanol (E10-E100) in the state, including the costs of constructing, installing, and equipping such technologies in the state. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify as an eligible cost under this subparagraph.

(c) "Ethanol" means ethanol as defined in s. 212.08(7)(ccc).

(d) "Hydrogen fuel cell" means hydrogen fuel cell as defined in s. 212.08(7)(ccc).

(2) TAX CREDIT.--For tax years beginning on or after January 1, 2007, a credit against the tax imposed by this chapter shall be granted in an amount equal to the eligible costs. Credits may be used in tax years beginning January 1, 2007, and ending December 31, 2010, after which the credit shall expire. If the credit is not fully used in any one tax year because of insufficient tax liability on the part of the corporation, the unused amount may be carried forward and used in tax years beginning January 1, 2007, and ending December 31, 2012, after which the credit carryover expires and may not be used. A taxpayer that files a consolidated return in this state as a member of an affiliated group under s. 220.131(1) may be allowed the credit on a consolidated return basis up to the amount of tax imposed upon the consolidated group. Any eligible cost for which a credit is claimed and which is deducted or otherwise reduces federal taxable income shall be added back in computing adjusted federal income under s. 220.13.

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514        (3) APPLICATION PROCESS.--Any corporation wishing to  
515        obtain tax credits available under this section must submit to  
516        the Department of Environmental Protection an application for  
517        tax credit that includes a complete description of all eligible  
518        costs for which the corporation is seeking a credit and a  
519        description of the total amount of credits sought. The  
520        Department of Environmental Protection shall make a  
521        determination on the eligibility of the applicant for the  
522        credits sought and certify the determination to the applicant  
523        and the Department of Revenue. The corporation must attach the  
524        Department of Environmental Protection's certification to the  
525        tax return on which the credit is claimed. The Department of  
526        Environmental Protection shall be responsible for ensuring that  
527        the corporate income tax credits granted in each fiscal year do  
528        not exceed the limits provided for in this section. The  
529        Department of Environmental Protection is authorized to adopt  
530        the necessary rules, guidelines, and application materials for  
531        the application process.

532        (4) ADMINISTRATION; AUDIT AUTHORITY; RECAPTURE OF  
533        CREDITS.--

534        (a) In addition to its existing audit and investigation  
535        authority, the Department of Revenue may perform any additional  
536        financial and technical audits and investigations, including  
537        examining the accounts, books, and records of the tax credit  
538        applicant, that are necessary to verify the eligible costs  
539        included in the tax credit return and to ensure compliance with  
540        this section. The Department of Environmental Protection shall  
541        provide technical assistance when requested by the Department of  
542        Revenue on any technical audits or examinations performed  
543        pursuant to this section.

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544        (b) It is grounds for forfeiture of previously claimed and  
545 received tax credits if the Department of Revenue determines, as  
546 a result of either an audit or examination or from information  
547 received from the Department of Environmental Protection, that a  
548 taxpayer received tax credits pursuant to this section to which  
549 the taxpayer was not entitled. The taxpayer is responsible for  
550 returning forfeited tax credits to the Department of Revenue,  
551 and such funds shall be paid into the General Revenue Fund of  
552 the state.

553        (c) The Department of Environmental Protection may revoke  
554 or modify any written decision granting eligibility for tax  
555 credits under this section if it is discovered that the tax  
556 credit applicant submitted any false statement, representation,  
557 or certification in any application, record, report, plan, or  
558 other document filed in an attempt to receive tax credits under  
559 this section. The Department of Environmental Protection shall  
560 immediately notify the Department of Revenue of any revoked or  
561 modified orders affecting previously granted tax credits.  
562 Additionally, the taxpayer must notify the Department of Revenue  
563 of any change in its tax credit claimed.

564        (d) The taxpayer shall file with the Department of Revenue  
565 an amended return or such other report as the Department of  
566 Revenue prescribes by rule and shall pay any required tax and  
567 interest within 60 days after the taxpayer receives notification  
568 from the Department of Environmental Protection that previously  
569 approved tax credits have been revoked or modified. If the  
570 revocation or modification order is contested, the taxpayer  
571 shall file an amended return or other report as provided in this  
572 paragraph within 60 days after a final order is issued following  
573 proceedings.

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(e) A notice of deficiency may be issued by the Department of Revenue at any time within 3 years after the taxpayer receives formal notification from the Department of Environmental Protection that previously approved tax credits have been revoked or modified. If a taxpayer fails to notify the Department of Revenue of any changes to its tax credit claimed, a notice of deficiency may be issued at any time.

(5) RULES.--The Department of Revenue shall have the authority to adopt rules relating to the forms required to claim a tax credit under this section, the requirements and basis for establishing an entitlement to a credit, and the examination and audit procedures required to administer this section.

(6) PUBLICATION.--The Department of Environmental Protection shall determine and publish on a regular basis the amount of available tax credits remaining in each fiscal year.

Section 13. Section 220.193, Florida Statutes, is created to read:

220.193 Florida renewable energy production credit.--

(1) The purpose of this section is to encourage the development and expansion of facilities that produce renewable energy in Florida.

(2) As used in this section, the term:

(a) "Commission" shall mean the Florida Public Service Commission.

(b) "Florida renewable energy facility" shall mean a facility in Florida that produces renewable energy, as defined in s. 377.803.

(c) "New facility" shall mean a Florida renewable energy facility that is operationally in service after May 1, 2006.

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603        (d) "Expanded facility" shall mean a Florida renewable  
604 energy facility that increases its electrical production by more  
605 than 5 percent after May 1, 2006.

606        (3) A credit against the tax imposed by this chapter shall  
607 be allowed to a taxpayer, based on the taxpayer's production and  
608 sale of electricity from a new or expanded Florida renewable  
609 energy facility. For a new facility, the credit shall be based  
610 on the taxpayer's sale of the facility's entire electrical  
611 production. For an expanded facility, the credit shall be based  
612 on the increases in the facility's electrical production that  
613 are achieved after May 1, 2006.

614        (a) The credit shall be \$0.01 for each kilowatt-hour of  
615 electricity produced and sold by the taxpayer to an unrelated  
616 party during a given tax year.

617        (b) The credit may be claimed for electricity produced and  
618 sold on or after January 1, 2007. The credit may be claimed for  
619 a maximum period of 10 years, commencing with the first tax year  
620 the credit is earned. In cases of multiple expansions of the  
621 same facility which are completed in different calendar years,  
622 the taxpayer may propose staggered commencement dates for each  
623 expansion project provided that the credit attributable to each  
624 expansion is separately identified and quantified.

625        (c) If the credit granted pursuant to this section is not  
626 fully used in one year because of insufficient tax liability on  
627 the part of the taxpayer, the unused amount may be carried  
628 forward for a period not to exceed 5 years. The carryover credit  
629 may be used in a subsequent year when the tax imposed by this  
630 chapter for such year exceeds the credit for such year, after  
631 applying the other credits and unused credit carryovers in the  
632 order provided in s. 220.02(8).

633        (d) A taxpayer that files a consolidated return in this

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634 state as a member of an affiliated group under s. 220.131(1) may  
635 be allowed the credit on a consolidated return basis up to the  
636 amount of tax imposed upon the consolidated group.

637 (e)1. Tax credits that may be available under this section  
638 to an entity eligible under this section may be transferred  
639 after a merger or acquisition to the surviving or acquiring  
640 entity and used in the same manner with the same limitations.

641 2. The entity or its surviving or acquiring entity as  
642 described in subparagraph 1. may transfer any unused credit in  
643 whole or in units of no less than 25 percent of the remaining  
644 credit. The entity acquiring such credit may use it in the same  
645 manner and with the same limitations under this section Such  
646 transferred credits may not be transferred again although they  
647 may succeed to a surviving or acquiring entity subject to the  
648 same conditions and limitations as described in this section.

649 3. In the event the credit provided for under this section  
650 is reduced as a result of an examination or audit by the  
651 Department of Revenue, such tax deficiency shall be recovered  
652 from the first entity or the surviving or acquiring entity to  
653 have claimed such credit up to the amount of credit taken. Any  
654 subsequent deficiencies shall be assessed against any entity  
655 acquiring and claiming such credit, or in the case of multiple  
656 succeeding entities in the order of credit succession.

657 (f) Notwithstanding any other provision of this section,  
658 until calendar year 2011, the total credits granted by the  
659 Department of Revenue pursuant to this section shall not exceed  
660 10 million dollars for any tax year. Thereafter, such credits  
661 shall not exceed 15 million dollars for any tax year.

662 (g) A taxpayer claiming a credit under this section shall  
663 be required to add back to net income that portion of its  
664 business deductions claimed on its federal return paid or

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665 incurred for the taxable year which is equal to the amount of  
666 the credit allowable for the taxable year under this section.

667 (h) A taxpayer claiming credit under this section may not  
668 claim a credit under s. 220.192. A taxpayer claiming credit  
669 under s. 220.192 may not claim a credit under this section.

670 (4) The Department of Revenue may adopt rules to implement  
671 and administer this section, including rules prescribing forms,  
672 the documentation needed to substantiate a claim for the tax  
673 credit, and the specific procedures and guidelines for claiming  
674 the credit.

675 (5) This section shall take effect upon becoming law and  
676 shall apply to tax years beginning on and after January 1, 2007.

677 Section 14. Paragraph (a) of subsection (1) of section  
678 220.13, Florida Statutes, is amended to read:

679 220.13 "Adjusted federal income" defined.--

680 (1) The term "adjusted federal income" means an amount  
681 equal to the taxpayer's taxable income as defined in subsection  
682 (2), or such taxable income of more than one taxpayer as  
683 provided in s. 220.131, for the taxable year, adjusted as  
684 follows:

685 (a) Additions.--There shall be added to such taxable  
686 income:

687 1. The amount of any tax upon or measured by income,  
688 excluding taxes based on gross receipts or revenues, paid or  
689 accrued as a liability to the District of Columbia or any state  
690 of the United States which is deductible from gross income in  
691 the computation of taxable income for the taxable year.

692 2. The amount of interest which is excluded from taxable  
693 income under s. 103(a) of the Internal Revenue Code or any other  
694 federal law, less the associated expenses disallowed in the  
695 computation of taxable income under s. 265 of the Internal



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Revenue Code or any other law, excluding 60 percent of any amounts included in alternative minimum taxable income, as defined in s. 55(b)(2) of the Internal Revenue Code, if the taxpayer pays tax under s. 220.11(3).

3. In the case of a regulated investment company or real estate investment trust, an amount equal to the excess of the net long-term capital gain for the taxable year over the amount of the capital gain dividends attributable to the taxable year.

4. That portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.181. The provisions of this subparagraph shall expire and be void on June 30, 2005.

5. That portion of the ad valorem school taxes paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.182. The provisions of this subparagraph shall expire and be void on June 30, 2005.

6. The amount of emergency excise tax paid or accrued as a liability to this state under chapter 221 which tax is deductible from gross income in the computation of taxable income for the taxable year.

7. That portion of assessments to fund a guaranty association incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year.

8. In the case of a nonprofit corporation which holds a pari-mutuel permit and which is exempt from federal income tax as a farmers' cooperative, an amount equal to the excess of the gross income attributable to the pari-mutuel operations over the attributable expenses for the taxable year.

9. The amount taken as a credit for the taxable year under s. 220.1895.

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10. Up to nine percent of the eligible basis of any designated project which is equal to the credit allowable for the taxable year under s. 220.185.

11. The amount taken as a credit for the taxable year under s. 220.187.

12. The amount taken as a credit for the taxable year under ss. 220.192 and 220.193.

Section 15. Subsection (2) of section 186.801, Florida Statutes, is amended to read:

186.801 Ten-year site plans.--

(2) Within 9 months after the receipt of the proposed plan, the commission shall make a preliminary study of such plan and classify it as "suitable" or "unsuitable." The commission may suggest alternatives to the plan. All findings of the commission shall be made available to the Department of Environmental Protection for its consideration at any subsequent electrical power plant site certification proceedings. It is recognized that 10-year site plans submitted by an electric utility are tentative information for planning purposes only and may be amended at any time at the discretion of the utility upon written notification to the commission. A complete application for certification of an electrical power plant site under chapter 403, when such site is not designated in the current 10-year site plan of the applicant, shall constitute an amendment to the 10-year site plan. In its preliminary study of each 10-year site plan, the commission shall consider such plan as a planning document and shall review:

(a) The need, including the need as determined by the commission, for electrical power in the area to be served.

(b) The effect on fuel diversity within the state.

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757        ~~(c)~~~~(b)~~ The anticipated environmental impact of each  
758 proposed electrical power plant site.

759        ~~(d)~~~~(e)~~ Possible alternatives to the proposed plan.

760        ~~(e)~~~~(d)~~ The views of appropriate local, state, and federal  
761 agencies, including the views of the appropriate water  
762 management district as to the availability of water and its  
763 recommendation as to the use by the proposed plant of salt water  
764 or fresh water for cooling purposes.

765        ~~(f)~~~~(e)~~ The extent to which the plan is consistent with the  
766 state comprehensive plan.

767        ~~(g)~~~~(f)~~ The plan with respect to the information of the  
768 state on energy availability and consumption.

769        Section 16. Subsection (6) of section 366.04, Florida  
770 Statutes, is amended to read:

771        366.04 Jurisdiction of commission.--

772        (6) The commission shall further have exclusive  
773 jurisdiction to prescribe and enforce safety standards for  
774 transmission and distribution facilities of all public electric  
775 utilities, cooperatives organized under the Rural Electric  
776 Cooperative Law, and electric utilities owned and operated by  
777 municipalities. In adopting safety standards, the commission  
778 shall, at a minimum:

779        (a) Adopt the 1984 edition of the National Electrical  
780 Safety Code (ANSI C2) as initial standards; and

781        (b) Adopt, after review, any new edition of the National  
782 Electrical Safety Code (ANSI C2).

783  
784 The standards prescribed by the current 1984 edition of the  
785 National Electrical Safety Code (ANSI C2) shall constitute  
786 acceptable and adequate requirements for the protection of the  
787 safety of the public, and compliance with the minimum

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requirements of that code shall constitute good engineering practice by the utilities. The administrative authority referred to in the 1984 edition of the National Electrical Safety Code is the commission. However, nothing herein shall be construed as superseding, repealing, or amending the provisions of s. 403.523(1) and (10).

Section 17. Subsections (1) and (8) of section 366.05, Florida Statutes, are amended to read:

366.05 Powers.--

(1) In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, including the ability to adopt construction standards that exceed the National Electrical Safety Code, for purposes of ensuring the reliable provision of service, and service rules and regulations to be observed by each public utility; to require repairs, improvements, additions, replacements, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto; to employ and fix the compensation for such examiners and technical, legal, and clerical employees as it deems necessary to carry out the provisions of this chapter; and to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter.

(8) If the commission determines that there is probable cause to believe that inadequacies exist with respect to the energy grids developed by the electric utility industry, including inadequacies in fuel diversity or fuel supply reliability, it shall have the power, after proceedings as provided by law, and after a finding that mutual benefits will

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819 accrue to the electric utilities involved, to require  
820 installation or repair of necessary facilities, including  
821 generating plants and transmission facilities, with the costs to  
822 be distributed in proportion to the benefits received, and to  
823 take all necessary steps to ensure compliance. The electric  
824 utilities involved in any action taken or orders issued pursuant  
825 to this subsection shall have full power and authority,  
826 notwithstanding any general or special laws to the contrary, to  
827 jointly plan, finance, build, operate, or lease generating and  
828 transmission facilities and shall be further authorized to  
829 exercise the powers granted to corporations in chapter 361. This  
830 subsection shall not supersede or control any provision of the  
831 Florida Electrical Power Plant Siting Act, ss. 403.501-403.518.

832 Section 18. Section 366.92, Florida Statutes, is created  
833 to read:

834 366.92 Florida renewable energy policy.--

835 (1) It is the intent of the Legislature to promote the  
836 development of renewable energy; diversify the types of fuel  
837 used to generate electricity in Florida; lessen Florida's  
838 dependence on natural gas and fuel oil for the production of  
839 electricity; minimize the volatility of fuel costs; encourage  
840 investment within the state; improve environmental conditions;  
841 and at the same time, minimize the costs of power supply to  
842 electric utilities and their customers.

843 (2) For the purposes of this section, "Florida renewable  
844 energy resources" shall mean renewable energy, as defined in s.  
845 377.803, that is produced in Florida.

846 (3) The commission shall adopt appropriate goals for  
847 increasing the use of existing, expanded, and new Florida  
848 renewable energy resources. The commission may change the goals.

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849 The commission shall review and reestablish the goals at least  
850 once every five years.

851 (4) The commission may adopt rules to administer and  
852 implement the provisions of this section.

853 Section 19. The Florida Public Service Commission shall  
854 direct a study of the electric transmission grid in the state.  
855 The study shall look at electric system reliability to examine  
856 the efficiency and reliability of power transfer and emergency  
857 contingency conditions. In addition, the study shall examine the  
858 hardening of infrastructure to address issues arising from the  
859 2004 and 2005 hurricane seasons. A report of the results of the  
860 study shall be provided to the Governor, the President of the  
861 Senate, and the Speaker of the House of Representatives by March  
862 1, 2007.

863 Section 20. Subsections (5), (8), (9), (12), (18), (24),  
864 and (27) of section 403.503, Florida Statutes, are amended,  
865 subsections (6) through (28) are renumbered as (7) through (29),  
866 respectively, and new subsections (6) and (16) are added to  
867 that section, to read:

868 403.503 Definitions relating to Florida Electrical Power  
869 Plant Siting Act.--As used in this act:

870 (5) "Application" means the documents required by the  
871 department to be filed to initiate a certification review and  
872 evaluation, including the initial document filing, amendments,  
873 and responses to requests from the department for additional  
874 data and information ~~proceeding and shall include the documents~~  
875 ~~necessary for the department to render a decision on any permit~~  
876 ~~required pursuant to any federally delegated or approved permit~~  
877 ~~program.~~

878 (6) "Associated facilities" means, for the purpose of  
879 certification, those facilities which directly support the

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880 construction and operation of the electrical power plant such as  
881 fuel unloading facilities; pipelines necessary for transporting  
882 fuel for the operation of the facility or other fuel  
883 transportation facilities; water or wastewater transport  
884 pipelines; construction, maintenance, and access roads; and  
885 railway lines necessary for transport of construction equipment  
886 or fuel for the operation of the facility.

887 (8) "Completeness" means that the application has  
888 addressed all applicable sections of the prescribed application  
889 format, and but does not mean that those sections are sufficient  
890 in comprehensiveness of data or in quality of information  
891 provided to allow the department to determine whether the  
892 application provides the reviewing agencies adequate information  
893 to prepare the reports required by s. 403.507.

894 (9) "Corridor" means the proposed area within which an  
895 associated linear facility right-of-way is to be located. The  
896 width of the corridor proposed for certification as an  
897 associated facility, at the option of the applicant, may be the  
898 width of the right-of-way or a wider boundary, not to exceed a  
899 width of 1 mile. The area within the corridor in which a right-  
900 of-way may be located may be further restricted by a condition  
901 of certification. After all property interests required for the  
902 right-of-way have been acquired by the licensee applicant, the  
903 boundaries of the area certified shall narrow to only that land  
904 within the boundaries of the right-of-way.

905 (12) "Electrical power plant" means, for the purpose of  
906 certification, any steam or solar electrical generating facility  
907 using any process or fuel, including nuclear materials, and  
908 includes associated facilities which directly support the  
909 construction and operation of the electrical power plant and  
910 those associated transmission lines which connect the electrical

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911 ~~power plant to an existing transmission network or rights-of-way~~  
912 ~~to which the applicant intends to connect,~~ except that this term  
913 does not include any steam or solar electrical generating  
914 facility of less than 75 megawatts in capacity unless the  
915 applicant for such a facility elects to apply for certification  
916 under this act. This term includes associated facilities to be  
917 owned by the applicant which are physically connected to the  
918 electrical power plant site or which are directly connected to  
919 the electrical power plant site by other proposed associated  
920 facilities to be owned by the applicant, and associated  
921 transmission lines to be owned by the applicant which connect  
922 the electrical power plant to an existing transmission network  
923 or rights-of-way of which the applicant intends to connect. An  
924 ~~associated transmission line may include,~~ At the applicant's  
925 option, this term may include, any offsite associated facilities  
926 which will not be owned by the applicant; offsite associated  
927 facilities which are owned by the applicant but which are not  
928 directly connected to the electrical power plant site; any  
929 proposed terminal or intermediate substations or substation  
930 expansions connected to the associated transmission line; or new  
931 transmission lines, upgrades, or improvements of an existing  
932 transmission line on any portion of the applicant's electrical  
933 transmission system necessary to support the generation injected  
934 into the system from the proposed electrical power plant.

935 (16) "Licensee" means an applicant that has obtained a  
936 certification order for the subject project.

937 (19)(18) "Nonprocedural requirements of agencies" means  
938 any agency's regulatory requirements established by statute,  
939 rule, ordinance, zoning ordinance, land development code, or  
940 comprehensive plan, excluding any provisions prescribing forms,  
941 fees, procedures, or time limits for the review or processing of



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information submitted to demonstrate compliance with such regulatory requirements.

(25)(24) "Right-of-way" means land necessary for the construction and maintenance of a connected associated linear facility, such as a railroad line, pipeline, or transmission line as owned by or proposed to be certified by the applicant. The typical width of the right-of-way shall be identified in the application. The right-of-way shall be located within the certified corridor and shall be identified by the applicant subsequent to certification in documents filed with the department prior to construction.

(28)(27) "Ultimate site capacity" means the maximum generating capacity for a site as certified by the board.  
~~"Sufficiency" means that the application is not only complete but that all sections are sufficient in the comprehensiveness of data or in the quality of information provided to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare the reports required by s. 403.507.~~

Section 21. Subsections (1), (7), (9), and (10) of section 403.504, Florida Statutes, are amended, and new subsections (9), (10), (11), and (12) are added to that section, to read:

403.504 Department of Environmental Protection; powers and duties enumerated.--The department shall have the following powers and duties in relation to this act:

(1) To adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this act, including rules setting forth environmental precautions to be followed in relation to the location, construction, and operation of electrical power plants.

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(7) To conduct studies and prepare a project written analysis under s. 403.507.

(9) To issue final orders after receipt of the administrative law judge's order relinquishing jurisdiction pursuant to s. 403.508(6).

(10) To act as clerk for the siting board.

(11) To administer and manage the terms and conditions of the certification order and supporting documents and records for the life of the facility.

(12) To issue emergency orders on behalf of the board for facilities licensed under this act.

~~(9) To notify all affected agencies of the filing of a notice of intent within 15 days after receipt of the notice.~~

~~(10) To issue, with the electrical power plant certification, any license required pursuant to any federally delegated or approved permit program.~~

Section 22. Section 403.5055, Florida Statutes, is amended to read:

403.5055 Application for permits pursuant to s. 403.0885.--In processing applications for permits pursuant to s. 403.0885 that are associated with applications for electrical power plant certification:

(1) The procedural requirements set forth in 40 C.F.R. s. 123.25, including public notice, public comments, and public hearings, shall be closely coordinated with the certification process established under this part. In the event of a conflict between the certification process and federally required procedures for NPDES permit issuance, the applicable federal requirements shall control.

~~(2) The department's proposed action pursuant to 40 C.F.R. s. 124.6, including any draft NPDES permit (containing the~~

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~~information required under 40 C.F.R. s. 124.6(d)), shall within  
130 days after the submittal of a complete application be  
publicly noticed and transmitted to the United States  
Environmental Protection Agency for its review pursuant to 33  
U.S.C. s. 1342(d).~~

(2)(3) If available at the time the department issues its  
project analysis pursuant to s. 403.507(5), the department shall  
include in its project analysis ~~written analysis pursuant to s.  
403.507(3)~~ copies of the department's proposed action pursuant  
to 40 C.F.R. s. 124.6 on any application for a NPDES permit; any  
corresponding comments received from the United States  
Environmental Protection Agency, the applicant, or the general  
public; and the department's response to those comments.

(3)(4) The department shall not issue or deny the permit  
pursuant to s. 403.0885 in advance of the issuance of the  
electrical electric power plant certification under this part  
unless required to do so by the provisions of federal law. When  
possible, any hearing on a permit issued pursuant to s. 403.0885  
shall be conducted in conjunction with the certification hearing  
held pursuant to this act. The department's actions on an NPDES  
permit shall be based on the record and recommended order of the  
certification hearing, if the hearing on the NPDES was conducted  
in conjunction with the certification hearing, and of any other  
proceeding held in connection with the application for an NPDES  
permit, timely public comments received with respect to the  
application, and the provisions of federal law. The department's  
action on an NPDES permit, if issued, shall differ from the  
actions taken by the siting board regarding the certification  
order if federal laws and regulations require different action  
to be taken to ensure compliance with the Clean Water Act, as  
amended, and implementing regulations. Nothing in this part

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shall be construed to displace the department's authority as the final permitting entity under the federally approved state NPDES program. Nothing in this part shall be construed to authorize the issuance of a state NPDES permit which does not conform to the requirements of the federally approved state NPDES program. ~~The permit, if issued, shall be valid for no more than 5 years.~~

~~(5) The department's action on an NPDES permit renewal, if issued, shall differ from the actions taken by the siting board regarding the certification order if federal laws and regulations require different action to be taken to ensure compliance with the Clean Water Act, as amended, and implementing regulations.~~

Section 23. Section 403.506, Florida Statutes, is amended to read:

403.506 Applicability, thresholds, and certification.--

(1) The provisions of this act shall apply to any electrical power plant as defined herein, except that the provisions of this act shall not apply to any electrical power plant or steam generating plant of less than 75 megawatts in capacity or to any substation to be constructed as part of an associated transmission line unless the applicant has elected to apply for certification of such plant or substation under this act. The provisions of this act shall not apply to any unit capacity expansion of 35 megawatts or less of an existing exothermic reaction cogeneration unit that was exempt from this act when it was originally built; however, this exemption shall not apply if the unit uses oil or natural gas for purposes other than unit startup. No construction of any new electrical power plant or expansion in steam generating capacity as measured by an increase in the maximum electrical generator rating of any existing electrical power plant may be undertaken after October

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1, 1973, without first obtaining certification in the manner as herein provided, except that this act shall not apply to any such electrical power plant which is presently operating or under construction or which has, upon the effective date of chapter 73-33, Laws of Florida, applied for a permit or certification under requirements in force prior to the effective date of such act.

(2) Except as provided in the certification, modification of nonnuclear fuels, internal related hardware, including increases in steam turbine efficiency, or operating conditions not in conflict with certification which increase the electrical output of a unit to no greater capacity than the maximum electrical generator rating ~~operating capacity~~ of the existing generator shall not constitute an alteration or addition to generating capacity which requires certification pursuant to this act.

~~(3) The application for any related department license which is required pursuant to any federally delegated or approved permit program shall be processed within the time periods allowed by this act, in lieu of those specified in s. 120.60. However, permits issued pursuant to s. 403.0885 shall be processed in accordance with 40 C.F.R. part 123.~~

Section 24. Section 403.5064, Florida Statutes, is amended to read:

403.5064 Application ~~Distribution of application~~; schedules.--

(1) The formal date of filing of a certification application and commencement of the certification review process shall be when the applicant submits:

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1094 (a) Copies of the certification application in a quantity  
1095 and format as prescribed by rule to the department and other  
1096 agencies identified in s. 403.507(2)(a).

1097 (b) The application fee specified under s. 403.518 to the  
1098 department.

1099 (2)(1) Within 7 days after the filing of an application,  
1100 the department shall provide to the applicant and the Division  
1101 of Administrative Hearings the names and addresses of any  
1102 additional ~~those affected or other~~ agencies or persons entitled  
1103 to notice and copies of the application and any amendments.  
1104 Copies of the application shall be distributed within 5 days by  
1105 the applicant to these additional agencies. This distribution  
1106 shall not be a basis for altering the schedule of dates for the  
1107 certification process.

1108 (3) Any amendment to the application made prior to  
1109 certification shall be disposed of as part of the original  
1110 certification proceeding. Amendment of the application may be  
1111 considered good cause for alteration of time limits pursuant to  
1112 s. 403.5095.

1113 (4)(2) Within 7 days after the filing of an application  
1114 ~~completeness has been determined~~, the department shall prepare a  
1115 proposed schedule of dates for determination of completeness,  
1116 submission of statements of issues, ~~determination of~~  
1117 sufficiency, and submittal of final reports, ~~from affected and~~  
1118 ~~other agencies~~ and other significant dates to be followed during  
1119 the certification process, including dates for filing notices of  
1120 appearance to be a party pursuant to s. 403.508(3)(4). This  
1121 schedule shall be timely provided by the department to the  
1122 applicant, the administrative law judge, all agencies identified  
1123 pursuant to subsection (2) (1), and all parties. Within 7 days  
1124 after the filing of the proposed schedule, the administrative

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1125 law judge shall issue an order establishing a schedule for the  
1126 matters addressed in the department's proposed schedule and  
1127 other appropriate matters, if any.

1128 ~~(5)(3) Within 7 days after completeness has been~~  
1129 ~~determined, the applicant shall distribute copies of the~~  
1130 ~~application to all agencies identified by the department~~  
1131 ~~pursuant to subsection (1).~~ Copies of changes and amendments to  
1132 the application shall be timely distributed by the applicant to  
1133 all ~~affected~~ agencies and parties who have received a copy of  
1134 the application.

1135 (6) Notice of the filing of the application shall be  
1136 published in accordance with the requirements of s. 403.5115.

1137 Section 25. Section 403.5065, Florida Statutes, is amended  
1138 to read:

1139 403.5065 Appointment of administrative law judge; powers  
1140 and duties.--

1141 (1) Within 7 days after receipt of an application, whether  
1142 ~~complete or not,~~ the department shall request the Division of  
1143 Administrative Hearings to designate an administrative law judge  
1144 to conduct the hearings required by this act. The division  
1145 director shall designate an administrative law judge within 7  
1146 days after receipt of the request from the department. In  
1147 designating an administrative law judge for this purpose, the  
1148 division director shall, whenever practicable, assign an  
1149 administrative law judge who has had prior experience or  
1150 training in electrical power plant site certification  
1151 proceedings. Upon being advised that an administrative law judge  
1152 has been appointed, the department shall immediately file a copy  
1153 of the application and all supporting documents with the  
1154 designated administrative law judge, who shall docket the  
1155 application.

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1156       (2) The administrative law judge shall have all powers and  
1157 duties granted to administrative law judges by chapter 120 and  
1158 by the laws and rules of the department.

1159       Section 26. Section 403.5066, Florida Statutes, is amended  
1160 to read:

1161       403.5066 Determination of completeness.--

1162       (1)(a) Within 30 days after the filing of an application,  
1163 affected agencies shall file a statement with the department  
1164 containing each agency's recommendations on the completeness of  
1165 the application.

1166       (b) Within 40 15 days after the filing receipt of an  
1167 application, the department shall file a statement with the  
1168 Division of Administrative Hearings, and with the applicant, and  
1169 with all parties declaring its position with regard to the  
1170 completeness, not the sufficiency, of the application. The  
1171 department's statement shall be based upon consultation with the  
1172 affected agencies.

1173       (2)(1) If the department declares the application to be  
1174 incomplete, the applicant, within 15 days after the filing of  
1175 the statement by the department, shall file with the Division of  
1176 Administrative Hearings, and with the department, and all  
1177 parties a statement:

1178       (a) A withdrawal of Agreeing with the statement of the  
1179 department and withdrawing the application;

1180       (b) A statement agreeing to supply the additional  
1181 information necessary to make the application complete. Such  
1182 additional information shall be provided within 30 days after  
1183 the issuance of the department's statement on completeness of  
1184 the application. The time schedules under this act shall not be  
1185 tolled if the applicant makes the application complete within 30  
1186 days after the issuance of the department's statement on



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1187 completeness of the application. A subsequent finding by the  
1188 department that the application remains incomplete, based upon  
1189 the additional information submitted by the applicant or upon  
1190 the failure of the applicant to timely submit the additional  
1191 information, tolls the time schedules under this act until the  
1192 application is determined complete; ~~Agreeing with the statement~~  
1193 ~~of the department and agreeing to amend the application without~~  
1194 ~~withdrawing it. The time schedules referencing a complete~~  
1195 ~~application under this act shall not commence until the~~  
1196 ~~application is determined complete; or~~

1197 (c) A statement contesting the department's determination  
1198 of incompleteness; or ~~contesting the statement of the~~  
1199 ~~department.~~

1200 (d) A statement agreeing with the department and  
1201 requesting additional time beyond 30 days to provide the  
1202 information necessary to make the application complete. If the  
1203 applicant exercises this option, the time schedules under this  
1204 act are tolled until the application is determined complete.

1205 (3) (a) (2) If the applicant contests the determination by  
1206 the department that an application is incomplete, the  
1207 administrative law judge shall schedule a hearing on the  
1208 statement of completeness. The hearing shall be held as  
1209 expeditiously as possible, but not later than 21 ~~30~~ days after  
1210 the filing of the statement by the department. The  
1211 administrative law judge shall render a decision within 7 ~~10~~  
1212 days after the hearing.

1213 (b) Parties to a hearing on the issue of completeness  
1214 shall include the applicant, the department, and any agency that  
1215 has jurisdiction over the matter in dispute.

1216 (c) ~~(a)~~ If the administrative law judge determines that the  
1217 application was not complete ~~as filed~~, the applicant shall

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1218 withdraw the application or make such additional submittals as  
1219 necessary to complete it. The time schedules referencing a  
1220 complete application under this act shall not commence until the  
1221 application is determined complete.

1222 ~~(d)(b)~~ If the administrative law judge determines that the  
1223 application was complete at the time it was declared incomplete  
1224 ~~filed~~, the time schedules referencing a complete application  
1225 under this act shall commence upon such determination.

1226 (4) If the applicant provides additional information to  
1227 address the issues identified in the determination of  
1228 incompleteness, each affected agency may submit to the  
1229 department, no later than 15 days after the applicant files the  
1230 additional information, a recommendation on whether the agency  
1231 believes the application is complete. Within 22 days after  
1232 receipt of the additional information from the applicant  
1233 submitted under paragraph (2)(b), paragraph (2)(d), or paragraph  
1234 (3)(c), the department shall determine whether the additional  
1235 information supplied by an applicant makes the application  
1236 complete. If the department finds that the application is still  
1237 incomplete, the applicant may exercise any of the options  
1238 specified in subsection (2) as often as is necessary to resolve  
1239 the dispute.

1240 Section 27. Section 403.50663, Florida Statutes, is  
1241 created to read:

1242 403.50663 Informational public meetings.--

1243 (1) A local government within whose jurisdiction the power  
1244 plant is proposed to be sited may hold one informational public  
1245 meeting in addition to the hearings specifically authorized by  
1246 this act on any matter associated with the electrical power  
1247 plant proceeding. Such informational public meetings shall be  
1248 held by the local government or by the regional planning council

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1249 if the local government does not hold such meeting within 70  
1250 days after the filing of the application. The purpose of an  
1251 informational public meeting is for the local government or  
1252 regional planning council to further inform the public about the  
1253 proposed electrical power plant or associated facilities, obtain  
1254 comments from the public, and formulate its recommendation with  
1255 respect to the proposed electrical power plant.

1256 (2) Informational public meetings shall be held solely at  
1257 the option of each local government or regional planning council  
1258 if a public meeting is not held by the local government. It is  
1259 the legislative intent that local governments or regional  
1260 planning councils attempt to hold such public meetings. Parties  
1261 to the proceedings under this act shall be encouraged to attend;  
1262 however, no party other than the applicant and the department  
1263 shall be required to attend such informational public meetings.

1264 (3) A local government or regional planning council that  
1265 intends to conduct an informational public meeting must provide  
1266 notice of the meeting to all parties not less than 5 days prior  
1267 to the meeting.

1268 (4) The failure to hold an informational public meeting or  
1269 the procedure used for the informational public meeting are not  
1270 grounds for the alteration of any time limitation in this act  
1271 under s. 403.5095 or grounds to deny or condition certification.

1272 Section 28. Section 403.50665, Florida Statutes, is  
1273 created to read:

1274 403.50665 Land use consistency.--

1275 (1) The applicant shall include in the application a  
1276 statement on the consistency of the site or any directly  
1277 associated facilities with existing land use plans and zoning  
1278 ordinances that were in effect on the date the application was  
1279 filed and a full description of such consistency.

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1280       (2) Within 45 days after the filing of the application,  
1281 each local government shall file a determination with the  
1282 department, the applicant, the administrative law judge, and all  
1283 parties on the consistency of the site or any directly  
1284 associated facilities with existing land use plans and zoning  
1285 ordinances that were in effect on the date the application was  
1286 filed, based on the information provided in the application.  
1287 Notice of the consistency determination shall be published in  
1288 accordance with the requirements of s. 403.5115.

1289       (3) If the local government issues a determination that  
1290 the proposed electrical power plant is not consistent or in  
1291 compliance with local land use plans and zoning ordinances, the  
1292 applicant may apply to the local government for the necessary  
1293 local approval to address the inconsistencies in the local  
1294 government's determination. If the applicant makes such an  
1295 application to the local government, the time schedules under  
1296 this act shall be tolled until the local government issues its  
1297 revised determination on land use and zoning or the applicant  
1298 otherwise withdraws its application to the local government. If  
1299 the applicant applies to the local government for necessary  
1300 local land use or zoning approval, the local government shall  
1301 issue a revised determination within 30 days following the  
1302 conclusion of that local proceeding, and the time schedules and  
1303 notice requirements under this act shall apply to such revised  
1304 determination.

1305       (4) If any substantially affected person wishes to dispute  
1306 the local government's determination, he or she shall file a  
1307 petition with the department within 21 days after the  
1308 publication of notice of the local government's determination.  
1309 If a hearing is requested, the provisions of s. 403.508(1) shall  
1310 apply.

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(5) The dates in this section may be altered upon agreement between the applicant, the local government, and the department pursuant to s. 403.5095.

(6) If it is determined by the local government that the proposed site or directly associated facility does conform with existing land use plans and zoning ordinances in effect as of the date of the application and no petition has been filed, the responsible zoning or planning authority shall not thereafter change such land use plans or zoning ordinances so as to foreclose construction and operation of the proposed site or directly associated facilities unless certification is subsequently denied or withdrawn.

Section 29. Section 403.5067, Florida Statutes, is repealed.

Section 30. Section 403.507, Florida Statutes, is amended to read:

403.507 Preliminary statements of issues, reports, project analyses, and studies.--

(1) Each affected agency identified in paragraph (2)(a) shall submit a preliminary statement of issues to the department, and the applicant, and all parties no later than 40 ~~60~~ days after the certification application has been determined ~~distribution of the complete application~~. The failure to raise an issue in this statement shall not preclude the issue from being raised in the agency's report.

(2)(a) No later than 100 days after the certification application has been determined complete, the following agencies shall prepare reports as provided below and shall submit them to the department and the applicant ~~within 150 days after distribution of the complete application:~~

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1341 1. The Department of Community Affairs shall prepare a  
1342 report containing recommendations which address the impact upon  
1343 the public of the proposed electrical power plant, based on the  
1344 degree to which the electrical power plant is consistent with  
1345 the applicable portions of the state comprehensive plan,  
1346 emergency management, and other such matters within its  
1347 jurisdiction. The Department of Community Affairs may also  
1348 comment on the consistency of the proposed electrical power  
1349 plant with applicable strategic regional policy plans or local  
1350 comprehensive plans and land development regulations.

1351 ~~2. The Public Service Commission shall prepare a report as~~  
1352 ~~to the present and future need for the electrical generating~~  
1353 ~~capacity to be supplied by the proposed electrical power plant.~~  
1354 ~~The report shall include the commission's determination pursuant~~  
1355 ~~to s. 403.519 and may include the commission's comments with~~  
1356 ~~respect to any other matters within its jurisdiction.~~

1357 ~~2.3-~~ The water management district shall prepare a report  
1358 as to matters within its jurisdiction, including but not limited  
1359 to, the impact of the proposed electrical power plant on water  
1360 resources, regional water supply planning, and district-owned  
1361 lands and works.

1362 ~~3.4-~~ Each local government in whose jurisdiction the  
1363 proposed electrical power plant is to be located shall prepare a  
1364 report as to the consistency of the proposed electrical power  
1365 plant with all applicable local ordinances, regulations,  
1366 standards, or criteria that apply to the proposed electrical  
1367 power plant, ~~including adopted local comprehensive plans, land~~  
1368 ~~development regulations, and any applicable local environmental~~  
1369 ~~regulations adopted pursuant to s. 403.182 or by other means.~~

1370 ~~4.5-~~ The Fish and Wildlife Conservation Commission shall  
1371 prepare a report as to matters within its jurisdiction.

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1372 ~~5.6.~~ Each The regional planning council shall prepare a  
1373 report containing recommendations that address the impact upon  
1374 the public of the proposed electrical power plant, based on the  
1375 degree to which the electrical power plant is consistent with  
1376 the applicable provisions of the strategic regional policy plan  
1377 adopted pursuant to chapter 186 and other matters within its  
1378 jurisdiction.

1379 6. The Department of Transportation shall address the  
1380 impact of the proposed electrical power plant on matters within  
1381 its jurisdiction.

1382 ~~(b)7.~~ Any other agency, if requested by the department,  
1383 shall also perform studies or prepare reports as to matters  
1384 within that agency's jurisdiction which may potentially be  
1385 affected by the proposed electrical power plant.

1386 ~~(b) As needed to verify or supplement the studies made by~~  
1387 ~~the applicant in support of the application, it shall be the~~  
1388 ~~duty of the department to conduct, or contract for, studies of~~  
1389 ~~the proposed electrical power plant and site, including, but not~~  
1390 ~~limited to, the following, which shall be completed no later~~  
1391 ~~than 210 days after the complete application is filed with the~~  
1392 ~~department:~~

- 1393 ~~1. Cooling system requirements.~~  
1394 ~~2. Construction and operational safeguards.~~  
1395 ~~3. Proximity to transportation systems.~~  
1396 ~~4. Soil and foundation conditions.~~  
1397 ~~5. Impact on suitable present and projected water supplies~~  
1398 ~~for this and other competing uses.~~  
1399 ~~6. Impact on surrounding land uses.~~  
1400 ~~7. Accessibility to transmission corridors.~~  
1401 ~~8. Environmental impacts.~~

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1402 ~~9. Requirements applicable under any federally delegated~~  
1403 ~~or approved permit program.~~

1404 ~~(3)(c)~~ Each report described in subsection (2) paragraphs  
1405 ~~(a) and (b)~~ shall contain:

1406 (a) A notice of any nonprocedural requirements not  
1407 specifically listed in the application from which a variance,  
1408 exemption, exception all information on variances, exemptions,  
1409 exceptions, or other relief is necessary in order for the  
1410 proposed electrical power plant to be certified. Failure of such  
1411 notification by an agency shall be treated as a waiver from  
1412 nonprocedural requirements of that agency. However, no variance  
1413 shall be granted from standards or regulations of the department  
1414 applicable under any federally delegated or approved permit  
1415 program, except as expressly allowed in such program. which may  
1416 be required by s. 403.511(2) and

1417 (b) A recommendation for approval or denial of the  
1418 application.

1419 (c) Any proposed conditions of certification on matters  
1420 within the jurisdiction of such agency. For each condition  
1421 proposed by an agency in its report, the agency shall list the  
1422 specific statute, rule, or ordinance which authorizes the  
1423 proposed condition.

1424 (d) The agencies shall initiate the activities required by  
1425 this section no later than 15 30 days after the complete  
1426 application is distributed. The agencies shall keep the  
1427 applicant and the department informed as to the progress of the  
1428 studies and any issues raised thereby.

1429 ~~(3) No later than 60 days after the application for a~~  
1430 ~~federally required new source review or prevention of~~  
1431 ~~significant deterioration permit for the electrical power plant~~  
1432 ~~is complete and sufficient, the department shall issue its~~



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~~preliminary determination on such permit. Notice of such determination shall be published as required by the department's rules for notices of such permits. The department shall receive public comments and comments from the United States Environmental Protection Agency and other affected agencies on the preliminary determination as provided for in the federally approved state implementation plan. The department shall maintain a record of all comments received and considered in taking action on such permits. If a petition for an administrative hearing on the department's preliminary determination is filed by a substantially affected person, that hearing shall be consolidated with the certification hearing.~~

(4) (a) No later than 150 days after the application is filed, the Public Service Commission shall prepare a report as to the present and future need for electrical generating capacity to be supplied by the proposed electrical power plant. The report shall include the commission's determination pursuant to s. 403.519 and may include the commission's comments with respect to any other matters within its jurisdiction.

(b) Receipt of an affirmative determination of need by the submittal deadline under paragraph (a) shall be a condition precedent to issuance of the department's project analysis and conduct of the certification hearing.

~~(5) (4)~~ The department shall prepare a project written analysis, which shall be filed with the designated administrative law judge and served on all parties no later than 130 ~~240~~ days after the ~~complete~~ application is determined ~~complete~~ filed with the department, but no later than ~~60~~ days prior to the hearing, and which shall include:

(a) A statement indicating whether the proposed electrical power plant and proposed ultimate site capacity will be in

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1464 compliance and consistent with matters within the department's  
1465 standard jurisdiction, including with the rules of the  
1466 department, as well as whether the proposed electrical power  
1467 plant and proposed ultimate site capacity will be in compliance  
1468 with the nonprocedural requirements of the affected agencies.

1469 (b) Copies of the studies and reports required by this  
1470 section ~~and s. 403.519.~~

1471 (c) The comments received by the department from any other  
1472 agency or person.

1473 (d) The recommendation of the department as to the  
1474 disposition of the application, of variances, exemptions,  
1475 exceptions, or other relief identified by any party, and of any  
1476 proposed conditions of certification which the department  
1477 believes should be imposed.

1478 (e) If available, the recommendation of the department  
1479 regarding the issuance of any license required pursuant to a  
1480 federally delegated or approved permit program.

1481 ~~(f) Copies of the department's draft of the operation~~  
1482 ~~permit for a major source of air pollution, which must also be~~  
1483 ~~provided to the United States Environmental Protection Agency~~  
1484 ~~for review within 5 days after issuance of the written analysis.~~

1485 (6)(5) Except when good cause is shown, the failure of any  
1486 agency to submit a preliminary statement of issues or a report,  
1487 or to submit its preliminary statement of issues or report  
1488 within the allowed time, shall not be grounds for the alteration  
1489 of any time limitation in this act. Neither the failure to  
1490 submit a preliminary statement of issues or a report nor the  
1491 inadequacy of the preliminary statement of issues or report are  
1492 ~~shall be~~ grounds to deny or condition certification.

1493 Section 31. Section 403.508, Florida Statutes, is amended  
1494 to read:

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1495 403.508 Land use and certification hearings proceedings,  
1496 parties, participants.--

1497 (1)(a) If a petition for a hearing on land use has been  
1498 filed pursuant to s. 403.50665, the designated administrative  
1499 law judge shall conduct a land use hearing in the county of the  
1500 proposed site or directly associated facility, as applicable, as  
1501 expeditiously as possible, but not later than 30 within 90 days  
1502 after the department's receipt of the petition a complete  
1503 application for electrical power plant site certification by the  
1504 department. The place of such hearing shall be as close as  
1505 possible to the proposed site or directly associated facility.  
1506 If a petition is filed, the hearing shall be held regardless of  
1507 the status of the completeness of the application. However,  
1508 incompleteness of information necessary for a local government  
1509 to evaluate an application may be claimed by the local  
1510 government as cause for a statement of inconsistency with  
1511 existing land use plans and zoning ordinances under s.  
1512 403.50665.

1513 (b) Notice of the land use hearing shall be published in  
1514 accordance with the requirements of s. 403.5115.

1515 (c)(2) The sole issue for determination at the land use  
1516 hearing shall be whether or not the proposed site is consistent  
1517 and in compliance with existing land use plans and zoning  
1518 ordinances. If the administrative law judge concludes that the  
1519 proposed site is not consistent or in compliance with existing  
1520 land use plans and zoning ordinances, the administrative law  
1521 judge shall receive at the hearing evidence on, and address in  
1522 the recommended order any changes to or approvals or variances  
1523 under, the applicable land use plans or zoning ordinances which  
1524 will render the proposed site consistent and in compliance with  
1525 the local land use plans and zoning ordinances.

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1526       (d) The designated administrative law judge's recommended  
1527 order shall be issued within 30 days after completion of the  
1528 hearing and shall be reviewed by the board within 60 45 days  
1529 after receipt of the recommended order by the board.

1530       (e) If it is determined by the board that the proposed  
1531 site does conform with existing land use plans and zoning  
1532 ordinances in effect as of the date of the application, or as  
1533 otherwise provided by this act, the responsible zoning or  
1534 planning authority shall not thereafter change such land use  
1535 plans or zoning ordinances so as to foreclose construction and  
1536 operation of ~~affect~~ the proposed electrical power plant on the  
1537 proposed site or directly associated facilities unless  
1538 certification is subsequently denied or withdrawn.

1539       (f) If it is determined by the board that the proposed  
1540 site does not conform with existing land use plans and zoning  
1541 ordinances, ~~it shall be the responsibility of the applicant to~~  
1542 ~~make the necessary application for rezoning. Should the~~  
1543 ~~application for rezoning be denied, the applicant may appeal~~  
1544 ~~this decision to the board, which may, if it determines after~~  
1545 ~~notice and hearing and upon consideration of the recommended~~  
1546 ~~order on land use and zoning issues that it is in the public~~  
1547 ~~interest to authorize the use of the land as a site for an~~  
1548 ~~electrical power plant, authorize a variance or other necessary~~  
1549 ~~approval to the adopted land use plan and zoning ordinances~~  
1550 ~~required to render the proposed site consistent with local land~~  
1551 ~~use plans and zoning ordinances. The board's action shall not be~~  
1552 ~~controlled by any other procedural requirements of law. In the~~  
1553 ~~event a variance or other approval is denied by the board, it~~  
1554 ~~shall be the responsibility of the applicant to make the~~  
1555 ~~necessary application for any approvals determined by the board~~  
1556 ~~as required to make the proposed site consistent and in~~

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1557 compliance with local land use plans and zoning ordinances. No  
1558 further action may be taken on the complete application by the  
1559 department until the proposed site conforms to the adopted land  
1560 use plan or zoning ordinances or the board grants relief as  
1561 provided under this act.

1562 (2)(a)(3) A certification hearing shall be held by the  
1563 designated administrative law judge no later than 265 ~~300~~ days  
1564 after the ~~complete~~ application is filed with the department,  
1565 ~~however, an affirmative determination of need by the Public~~  
1566 ~~Service Commission pursuant to s. 403.519 shall be a condition~~  
1567 ~~precedent to the conduct of the certification hearing. The~~  
1568 certification hearing shall be held at a location in proximity  
1569 to the proposed site. ~~The certification hearing shall also~~  
1570 ~~constitute the sole hearing allowed by chapter 120 to determine~~  
1571 ~~the substantial interest of a party regarding any required~~  
1572 ~~agency license or any related permit required pursuant to any~~  
1573 ~~federally delegated or approved permit program. At the~~  
1574 conclusion of the certification hearing, the designated  
1575 administrative law judge shall, after consideration of all  
1576 evidence of record, submit to the board a recommended order no  
1577 later than 45 ~~60~~ days after the filing of the hearing  
1578 transcript. ~~In the event the administrative law judge fails to~~  
1579 ~~issue a recommended order within 60 days after the filing of the~~  
1580 ~~hearing transcript, the administrative law judge shall submit a~~  
1581 ~~report to the board with a copy to all parties within 60 days~~  
1582 ~~after the filing of the hearing transcript to advise the board~~  
1583 ~~of the reason for the delay in the issuance of the recommended~~  
1584 ~~order and of the date by which the recommended order will be~~  
1585 ~~issued.~~

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(b) Notice of the certification hearing and notice of the deadline for filing of notice of intent to be a party shall be made in accordance with the requirements of s. 403.5115.

(3) ~~(a)-(4)-(a)~~ Parties to the proceeding shall include:

1. The applicant.
2. The Public Service Commission.
3. The Department of Community Affairs.
4. The Fish and Wildlife Conservation Commission.
5. The water management district.
6. The department.
7. The regional planning council.
8. The local government.
9. The Department of Transportation.

(b) Any party listed in paragraph (a) other than the department or the applicant may waive its right to participate in these proceedings. If such listed party fails to file a notice of its intent to be a party on or before the 90th day prior to the certification hearing, such party shall be deemed to have waived its right to be a party.

(c) Notwithstanding the provisions of chapter 120, upon the filing with the administrative law judge of a notice of intent to be a party no later than 75 days after the application is filed ~~at least 15 days prior to the date of the land use hearing,~~ the following shall also be parties to the proceeding:

1. Any agency not listed in paragraph (a) as to matters within its jurisdiction.
2. Any domestic nonprofit corporation or association formed, in whole or in part, to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent labor, commercial, or

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1617 industrial groups; or to promote comprehensive planning or  
1618 orderly development of the area in which the proposed electrical  
1619 power plant is to be located.

1620 (d) Notwithstanding paragraph (e), failure of an agency  
1621 described in subparagraph (c)1. to file a notice of intent to be  
1622 a party within the time provided herein shall constitute a  
1623 waiver of the right of that agency to participate as a party in  
1624 the proceeding.

1625 (e) Other parties may include any person, including those  
1626 persons enumerated in paragraph (c) who have failed to timely  
1627 file a notice of intent to be a party, whose substantial  
1628 interests are affected and being determined by the proceeding  
1629 and who timely file a motion to intervene pursuant to chapter  
1630 120 and applicable rules. Intervention pursuant to this  
1631 paragraph may be granted at the discretion of the designated  
1632 administrative law judge and upon such conditions as he or she  
1633 may prescribe any time prior to 30 days before the commencement  
1634 of the certification hearing.

1635 (f) Any agency, including those whose properties or works  
1636 are being affected pursuant to s. 403.509(4), shall be made a  
1637 party upon the request of the department or the applicant.

1638 (4)(a) The order of presentation at the certification  
1639 hearing, unless otherwise changed by the administrative law  
1640 judge to ensure the orderly presentation of witnesses and  
1641 evidence, shall be:

- 1642 1. The applicant.  
1643 2. The department.  
1644 3. State agencies.  
1645 4. Regional agencies, including regional planning councils  
1646 and water management districts.  
1647 5. Local governments.

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1648        6. Other parties.

1649        (b) ~~(5)~~ When appropriate, any person may be given an  
1650 opportunity to present oral or written communications to the  
1651 designated administrative law judge. If the designated  
1652 administrative law judge proposes to consider such  
1653 communications, then all parties shall be given an opportunity  
1654 to cross-examine or challenge or rebut such communications.

1655        (5) At the conclusion of the certification hearing, the  
1656 designated administrative law judge shall, after consideration  
1657 of all evidence of record, submit to the board a recommended  
1658 order no later than 45 days after the filing of the hearing  
1659 transcript.

1660        (6) (a) No earlier than 29 days prior to the conduct of the  
1661 certification hearing, the department or the applicant may  
1662 request that the administrative law judge cancel the  
1663 certification hearing and relinquish jurisdiction to the  
1664 department if all parties to the proceeding stipulate that there  
1665 are no disputed issues of fact or law to be raised at the  
1666 certification hearing, and if sufficient time remains for the  
1667 applicant and the department to publish public notices of the  
1668 cancellation of the hearing at least 3 days prior to the  
1669 scheduled date of the hearing.

1670        (b) The administrative law judge shall issue an order  
1671 granting or denying the request within 5 days after receipt of  
1672 the request.

1673        (c) If the administrative law judge grants the request,  
1674 the department and the applicant shall publish notices of the  
1675 cancellation of the certification hearing, in accordance with s.  
1676 403.5115.

1677        (d)1. If the administrative law judge grants the request,  
1678 the department shall prepare and issue a final order in



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1679 accordance with s. 403.509(1)(a).

1680 2. Parties may submit proposed recommended orders to the  
1681 department no later than 10 days after the administrative law  
1682 judge issues an order relinquishing jurisdiction.

1683 (7) The applicant shall pay those expenses and costs  
1684 associated with the conduct of the hearings and the recording  
1685 and transcription of the proceedings.

1686 ~~(6) The designated administrative law judge shall have all~~  
1687 ~~powers and duties granted to administrative law judges by~~  
1688 ~~chapter 120 and this chapter and by the rules of the department~~  
1689 ~~and the Administration Commission, including the authority to~~  
1690 ~~resolve disputes over the completeness and sufficiency of an~~  
1691 ~~application for certification.~~

1692 ~~(7) The order of presentation at the certification~~  
1693 ~~hearing, unless otherwise changed by the administrative law~~  
1694 ~~judge to ensure the orderly presentation of witnesses and~~  
1695 ~~evidence, shall be:~~

1696 ~~(a) The applicant.~~

1697 ~~(b) The department.~~

1698 ~~(c) State agencies.~~

1699 ~~(d) Regional agencies, including regional planning~~  
1700 ~~councils and water management districts.~~

1701 ~~(e) Local governments.~~

1702 ~~(f) Other parties.~~

1703 (8) In issuing permits under the federally approved new  
1704 source review or prevention of significant deterioration permit  
1705 program, the department shall observe the procedures specified  
1706 under the federally approved state implementation plan,  
1707 including public notice, public comment, public hearing, and  
1708 notice of applications and amendments to federal, state, and  
1709 local agencies, to assure that all such permits issued in

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1710 coordination with the certification of a power plant under this  
1711 act are federally enforceable and are issued after opportunity  
1712 for informed public participation regarding the terms and  
1713 conditions thereof. When possible, any hearing on a federally  
1714 approved or delegated program permit such as new source review,  
1715 prevention of significant deterioration permit, or NPDES permit  
1716 shall be conducted in conjunction with the certification hearing  
1717 held under this act. ~~The department shall accept written comment~~  
1718 ~~with respect to an application for, or the department's~~  
1719 ~~preliminary determination on, a new source review or prevention~~  
1720 ~~of significant deterioration permit for a period of no less than~~  
1721 ~~30 days from the date notice of such action is published. Upon~~  
1722 ~~request submitted within 30 days after published notice, the~~  
1723 ~~department shall hold a public meeting, in the area affected,~~  
1724 ~~for the purpose of receiving public comment on issues related to~~  
1725 ~~the new source review or prevention of significant deterioration~~  
1726 ~~permit. If requested following notice of the department's~~  
1727 ~~preliminary determination, the public meeting to receive public~~  
1728 ~~comment shall be held prior to the scheduled certification~~  
1729 ~~hearing. The department shall also solicit comments from the~~  
1730 ~~United States Environmental Protection Agency and other affected~~  
1731 ~~federal agencies regarding the department's preliminary~~  
1732 ~~determination for any federally required new source review or~~  
1733 ~~prevention of significant deterioration permit. It is the intent~~  
1734 ~~of the Legislature that the review, processing, and issuance of~~  
1735 ~~such federally delegated or approved permits be closely~~  
1736 ~~coordinated with the certification process established under~~  
1737 ~~this part. In the event of a conflict between the certification~~  
1738 ~~process and federally required procedures contained in the state~~  
1739 ~~implementation plan, the applicable federal requirements of the~~  
1740 ~~implementation plan shall control.~~

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Section 32. Section 403.509, Florida Statutes, is amended to read:

403.509 Final disposition of application.--

(1)(a) If the administrative law judge has granted a request to cancel the certification hearing and has relinquished jurisdiction to the department under the provisions of s. 403.508(6), within 40 days thereafter, the secretary of the department shall act upon the application by written order in accordance with the terms of this act and the stipulation of the parties in requesting cancellation of the certification hearing.

(b) If the administrative law judge has not granted a request to cancel the certification hearing under the provisions of s. 403.508(6), within 60 days after receipt of the designated administrative law judge's recommended order, the board shall act upon the application by written order, approving ~~certification~~ or denying certification ~~the issuance of a certificate~~, in accordance with the terms of this act, and stating the reasons for issuance or denial. If certification ~~the certificate~~ is denied, the board shall set forth in writing the action the applicant would have to take to secure the board's approval of the application.

(2) The issues that may be raised in any hearing before the board shall be limited to those matters raised in the certification proceeding before the administrative law judge or raised in the recommended order. All parties, or their representatives, or persons who appear before the board shall be subject to the provisions of s. 120.66.

(3) In determining whether an application should be approved in whole, approved with modifications or conditions, or denied, the board, or secretary when applicable, shall consider whether, and the extent to which, the location of the electrical

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1772 power plant and directly associated facilities and their  
1773 construction and operation will:

1774 (a) Provide reasonable assurance that operational  
1775 safeguards are technically sufficient for the public welfare and  
1776 protection.

1777 (b) Comply with applicable nonprocedural requirements of  
1778 agencies.

1779 (c) Be consistent with applicable local government  
1780 comprehensive plans and land development regulations.

1781 (d) Meet the electrical energy needs of the state in an  
1782 orderly and timely fashion.

1783 (e) Effect a reasonable balance between the need for the  
1784 facility as established pursuant to s. 403.519, and the impacts  
1785 upon air and water quality, fish and wildlife, water resources,  
1786 and other natural resources of the state resulting from the  
1787 construction and operation of the facility.

1788 (f) Minimize, through the use of reasonable and available  
1789 methods, the adverse effects on human health, the environment,  
1790 and the ecology of the land and its wildlife and the ecology of  
1791 state waters and their aquatic life.

1792 (g) Serve and protect the broad interests of the public.

1793 ~~(3) Within 30 days after issuance of the certification,~~  
1794 ~~the department shall issue and forward to the United States~~  
1795 ~~Environmental Protection Agency a proposed operation permit for~~  
1796 ~~a major source of air pollution and must issue or deny any other~~  
1797 ~~license required pursuant to any federally delegated or approved~~  
1798 ~~permit program. The department's action on the license and its~~  
1799 ~~action on the proposed operation permit for a major source of~~  
1800 ~~air pollution shall be based upon the record and recommended~~  
1801 ~~order of the certification hearing. The department's actions on~~  
1802 ~~a federally required new source review or prevention of~~

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~~significant deterioration permit shall be based on the record and recommended order of the certification hearing and of any other proceeding held in connection with the application for a new source review or prevention of significant deterioration permit, on timely public comments received with respect to the application or preliminary determination for such permit, and on the provisions of the state implementation plan.~~

(4) The department's action on a federally required new source review or prevention of significant deterioration permit shall differ from the actions taken by the siting board regarding the certification if the federally approved state implementation plan requires such a different action to be taken by the department. Nothing in this part shall be construed to displace the department's authority as the final permitting entity under the federally approved permit program. Nothing in this part shall be construed to authorize the issuance of a new source review or prevention of significant deterioration permit which does not conform to the requirements of the federally approved state implementation plan. ~~Any final operation permit for a major source of air pollution must be issued in accordance with the provisions of s. 403.0872. Unless the federally delegated or approved permit program provides otherwise, licenses issued by the department under this subsection shall be effective for the term of the certification issued by the board. If renewal of any license issued by the department pursuant to a federally delegated or approved permit program is required, such renewal shall not affect the certification issued by the board, except as necessary to resolve inconsistencies pursuant to s. 403.516(1)(a).~~

(5)~~(4)~~ In regard to the properties and works of any agency which is a party to the certification hearing, the board shall

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1834 have the authority to decide issues relating to the use, the  
1835 connection thereto, or the crossing thereof, for the electrical  
1836 power plant and directly associated facilities ~~site~~ and to  
1837 direct any such agency to execute, within 30 days after the  
1838 entry of certification, the necessary license or easement for  
1839 such use, connection, or crossing, subject only to the  
1840 conditions set forth in such certification.

1841 ~~(6)(5) Except for the issuance of any operation permit for~~  
1842 ~~a major source of air pollution pursuant to s. 403.0872, The~~  
1843 ~~issuance or denial of the certification by the board or~~  
1844 ~~secretary of the department and the issuance or denial of any~~  
1845 ~~related department license required pursuant to any federally~~  
1846 ~~delegated or approved permit program shall be the final~~  
1847 ~~administrative action required as to that application.~~

1848 ~~(6) All certified electrical power plants must apply for~~  
1849 ~~and obtain a major source air operation permit pursuant to s.~~  
1850 ~~403.0872. Major source air operation permit applications for~~  
1851 ~~certified electrical power plants must be submitted pursuant to~~  
1852 ~~a schedule developed by the department. To the extent that any~~  
1853 ~~conflicting provision, limitation, or restriction under any~~  
1854 ~~rule, regulation, or ordinance imposed by any political~~  
1855 ~~subdivision of the state, or by any local pollution control~~  
1856 ~~program, was superseded during the certification process~~  
1857 ~~pursuant to s. 403.510(1), such rule, regulation, or ordinance~~  
1858 ~~shall continue to be superseded for purposes of the major source~~  
1859 ~~air operation permit program under s. 403.0872.~~

1860 Section 33. Section 403.511, Florida Statutes, is amended  
1861 to read:

1862 403.511 Effect of certification.--

1863 (1) Subject to the conditions set forth therein, any  
1864 certification ~~signed by the Governor~~ shall constitute the sole

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license of the state and any agency as to the approval of the site and the construction and operation of the proposed electrical power plant, except for the issuance of department licenses required under any federally delegated or approved permit program and except as otherwise provided in subsection (4).

(2)(a) The certification shall authorize the licensee ~~applicant~~ named therein to construct and operate the proposed electrical power plant, subject only to the conditions of certification set forth in such certification, and except for the issuance of department licenses or permits required under any federally delegated or approved permit program.

(b)1. Except as provided in subsection (4), the certification may include conditions which constitute variances, exemptions, or exceptions from nonprocedural requirements of the department or any agency which were expressly considered during the proceeding, including, but not limited to, any site specific criteria, standards, or limitations under local land use and zoning approvals which affect the proposed electrical power plant or its site, unless waived by the agency ~~as provided below~~ and which otherwise would be applicable to the construction and operation of the proposed electrical power plant.

2. No variance, exemption, exception, or other relief shall be granted from a state statute or rule for the protection of endangered or threatened species, aquatic preserves, Outstanding National Resource Waters, or Outstanding Florida Waters or for the disposal of hazardous waste, except to the extent authorized by the applicable statute or rule or except upon a finding in the certification order ~~by the siting board~~ that the public interests set forth in s. 403.509(3) ~~403.502~~ in certifying the electrical power plant at the site proposed by

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the applicant overrides the public interest protected by the statute or rule from which relief is sought. ~~Each party shall notify the applicant and other parties at least 60 days prior to the certification hearing of any nonprocedural requirements not specifically listed in the application from which a variance, exemption, exception, or other relief is necessary in order for the board to certify any electrical power plant proposed for certification. Failure of such notification by an agency shall be treated as a waiver from nonprocedural requirements of the department or any other agency. However, no variance shall be granted from standards or regulations of the department applicable under any federally delegated or approved permit program, except as expressly allowed in such program.~~

(3) The certification and any order on land use and zoning issued under this act shall be in lieu of any license, permit, certificate, or similar document required by any state, regional, or local agency pursuant to, but not limited to, chapter 125, chapter 161, chapter 163, chapter 166, chapter 186, chapter 253, chapter 298, chapter 370, chapter 373, chapter 376, chapter 380, chapter 381, chapter 387, chapter 403, except for permits issued pursuant to any federally delegated or approved permit program ~~s. 403.0885~~ and except as provided in ~~s. 403.509(3) and (6)~~, chapter 404, or the Florida Transportation Code, or 33 U.S.C. s. 1341.

(4) This act shall not affect in any way the ratemaking powers of the Public Service Commission under chapter 366; nor shall this act in any way affect the right of any local government to charge appropriate fees or require that construction be in compliance with applicable building construction codes.



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(5)(a) An electrical power plant certified pursuant to this act shall comply with rules adopted by the department subsequent to the issuance of the certification which prescribe new or stricter criteria, to the extent that the rules are applicable to electrical power plants. Except when express variances, exceptions, exemptions, or other relief have been granted, subsequently adopted rules which prescribe new or stricter criteria shall operate as automatic modifications to certifications.

(b) Upon written notification to the department, any holder of a certification issued pursuant to this act may choose to operate the certified electrical power plant in compliance with any rule subsequently adopted by the department which prescribes criteria more lenient than the criteria required by the terms and conditions in the certification which are not site-specific.

(c) No term or condition of certification shall be interpreted to preclude the postcertification exercise by any party of whatever procedural rights it may have under chapter 120, including those related to rulemaking proceedings. This subsection shall apply to previously issued certifications.

(6) No term or condition of a site certification shall be interpreted to supersede or control the provisions of a final operation permit for a major source of air pollution issued by the department pursuant to s. 403.0872 to a ~~such~~ facility certified under this part.

(7) Pursuant to s. 380.23, electrical power plants are subject to the federal coastal consistency review program. Issuance of certification shall constitute the state's certification of coastal zone consistency.

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Section 34. Section 403.5112, Florida Statutes, is created to read:

403.5112 Filing of notice of certified corridor route.--

(1) Within 60 days after certification of a directly associated linear facility pursuant to this act, the applicant shall file, in accordance with s. 28.222, with the department and the clerk of the circuit court for each county through which the corridor will pass, a notice of the certified route.

(2) The notice shall consist of maps or aerial photographs in the scale of 1:24,000 which clearly show the location of the certified route and shall state that the certification of the corridor will result in the acquisition of rights-of-way within the corridor. Each clerk shall record the filing in the official record of the county for the duration of the certification or until such time as the applicant certifies to the department and the clerk that all lands required for the transmission line rights-of-way within the corridor have been acquired within such county, whichever is sooner.

Section 35. Section 403.5113, Florida Statutes, is created to read:

403.5113 Postcertification amendments.--

(1) If, subsequent to certification by the board, a licensee proposes any material change to the application and revisions or amendments thereto, as certified, the licensee shall submit a written request for amendment and a description of the proposed change to the application to the department. Within 30 days after the receipt of the request for the amendment, the department shall determine whether the proposed change to the application requires a modification of the conditions of certification.

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(2) If the department concludes that the change would not require a modification of the conditions of certification, the department shall provide written notification of the approval of the proposed amendment to the licensee, all agencies, and all other parties.

(3) If the department concludes that the change would require a modification of the conditions of certification, the department shall provide written notification to the licensee that the proposed change to the application requires a request for modification pursuant to s. 403.516.

(4) Postcertification submittals filed by the licensee with one or more agencies are for the purpose of monitoring for compliance with the issued certification and must be reviewed by the agencies on an expedited and priority basis because each facility certified under this act is a critical infrastructure facility. In no event shall a postcertification review be completed in more than 90 days after complete information is submitted to the reviewing agencies.

Section 36. Section 403.5115, Florida Statutes, is amended to read:

403.5115 Public notice; ~~costs of proceeding.~~--

(1) The following notices are to be published by the applicant:

(a) Notice ~~A notice~~ of the filing of a notice of intent under s. 403.5063, which shall be published within 21 days after the filing of the notice. The notice shall be published as specified by subsection (2), except that the newspaper notice shall be one-fourth page in size in a standard size newspaper or one-half page in size in a tabloid size newspaper.

(b) Notice ~~A notice~~ of filing of the application, which shall include a description of the proceedings required by this

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act, within 21 days after the date of the application filing be  
~~published as specified in subsection (2), within 15 days after~~  
~~the application has been determined complete.~~ Such notice shall  
give notice of the provisions of s. 403.511(1) and (2) ~~and that~~  
~~the application constitutes a request for a federally required~~  
~~new source review or prevention of significant deterioration~~  
~~permit.~~

(c) Notice of the land use determination made pursuant to  
s. 403.50665(1) within 21 days after the determination is filed.

(d) Notice of the land use hearing, which shall be  
published as specified in subsection (2), no later than 15 ~~45~~  
days before the hearing.

~~(e)(d)~~ Notice of the certification hearing and notice of  
the deadline for filing notice of intent to be a party, which  
shall be published as specified in subsection (2), at least 65  
days before the date set for the certification ~~no later than 45~~  
~~days before the hearing.~~

(f) Notice of the cancellation of the certification  
hearing, if applicable, no later than 3 days before the date of  
the originally scheduled certification hearing.

~~(g)(e)~~ Notice of modification when required by the  
department, based on whether the requested modification of  
certification will significantly increase impacts to the  
environment or the public. Such notice shall be published as  
specified under subsection (2):

1. Within 21 days after receipt of a request for  
modification., ~~except that~~ The newspaper notice shall be of a  
size as directed by the department commensurate with the scope  
of the modification.

2. If a hearing is to be conducted in response to the  
request for modification, then notice shall be published no

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later than 30 days before the hearing ~~provided as specified in paragraph (d).~~

~~(h)(f)~~ Notice of a supplemental application, which shall be published as specified in paragraph (b) and subsection (2).~~follows:~~

~~1. Notice of receipt of the supplemental application shall be published as specified in paragraph (b).~~

~~2. Notice of the certification hearing shall be published as specified in paragraph (d).~~

(i) Notice of existing site certification pursuant to s. 403.5175. Notices shall be published as specified in paragraph (b) and subsection (2).

(2) Notices provided by the applicant shall be published in newspapers of general circulation within the county or counties in which the proposed electrical power plant will be located. The newspaper notices shall be at least one-half page in size in a standard size newspaper or a full page in a tabloid size newspaper ~~and published in a section of the newspaper other than the legal notices section.~~ These notices shall include a map generally depicting the project and all associated facilities corridors. A newspaper of general circulation shall be the newspaper which has the largest daily circulation in that county and has its principal office in that county. If the newspaper with the largest daily circulation has its principal office outside the county, the notices shall appear in both the newspaper having the largest circulation in that county and in a newspaper authorized to publish legal notices in that county.

(3) All notices published by the applicant shall be paid for by the applicant and shall be in addition to the application fee.

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(4) The department shall arrange for publication of the following notices in the manner specified by chapter 120 and provide copies of those notices to any persons who have requested to be placed on the departmental mailing list for this purpose:

(a) ~~Notice Publish in the Florida Administrative Weekly~~ notices of the filing of the notice of intent within 15 days after receipt of the notice.†

(b) Notice of the filing of the application, no later than 21 days after the application filing.†

(c) Notice of the land use determination made pursuant to s. 403.50665(1) within 21 days after the determination is filed.

(d) Notice of the land use hearing before the administrative law judge, if applicable, no later than 15 days before the hearing.†

(e) Notice of the land use hearing before the board, if applicable.

(f) Notice of the certification hearing at least 45 days before the date set for the certification hearing.†

(g) Notice of the cancellation of the certification hearing, if applicable, no later than 3 days prior to the date of the originally scheduled certification hearing.

(h) Notice of the hearing before the board, if applicable.†

(i) Notice and of stipulations, proposed agency action, or petitions for modification.† and

~~(b) Provide copies of those notices to any persons who have requested to be placed on the departmental mailing list for this purpose.~~

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2107       ~~(5) The applicant shall pay those expenses and costs~~  
2108 ~~associated with the conduct of the hearings and the recording~~  
2109 ~~and transcription of the proceedings.~~

2110       Section 37. Section 403.513, Florida Statutes, is amended  
2111 to read:

2112       403.513 Review.--Proceedings under this act shall be  
2113 subject to judicial review as provided in chapter 120. When  
2114 possible, separate appeals of the certification order issued by  
2115 the board and of any department permit issued pursuant to a  
2116 federally delegated or approved permit program may ~~shall~~ be  
2117 consolidated for purposes of judicial review.

2118       Section 38. Section 403.516, Florida Statutes, is amended  
2119 to read:

2120       403.516 Modification of certification.--

2121       (1) A certification may be modified after issuance in any  
2122 one of the following ways:

2123       (a) The board may delegate to the department the authority  
2124 to modify specific conditions in the certification.

2125       (b)1. The department may modify specific conditions of a  
2126 site certification which are inconsistent with the terms of any  
2127 federally delegated or approved final air pollution operation  
2128 permit for the certified electrical power plant issued by the  
2129 United States Environmental Protection Agency under the terms of  
2130 42 U.S.C. s. 7661d.

2131       2. Such modification may be made without further notice if  
2132 the matter has been previously noticed under the requirements  
2133 for any federally delegated or approved permit program.

2134       (c) The licensee may file a petition for modification with  
2135 the department, or the department may initiate the modification  
2136 upon its own initiative.

2137       1. A petition for modification must set forth:

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2138        a. The proposed modification.

2139        b. The factual reasons asserted for the modification.

2140        c. The anticipated environmental effects of the proposed  
2141 modification.

2142        2.(b) The department may modify the terms and conditions  
2143 of the certification if no party to the certification hearing  
2144 objects in writing to such modification within 45 days after  
2145 notice by mail to such party's last address of record, and if no  
2146 other person whose substantial interests will be affected by the  
2147 modification objects in writing within 30 days after issuance of  
2148 public notice.

2149        3. If objections are raised or the department denies the  
2150 request, the applicant or department may file a request petition  
2151 for a hearing on the modification with the department. Such  
2152 request shall be handled pursuant to chapter 120 paragraph (c).

2153        ~~(c) A petition for modification may be filed by the~~  
2154 ~~applicant or the department setting forth:~~

2155            ~~1. The proposed modification,~~

2156            ~~2. The factual reasons asserted for the modification, and~~

2157            ~~3. The anticipated effects of the proposed modification on~~  
2158 ~~the applicant, the public, and the environment.~~

2159  
2160 ~~The petition for modification shall be filed with the department~~  
2161 ~~and the Division of Administrative Hearings.~~

2162        4. Requests referred to the Division of Administrative  
2163 Hearings shall be disposed of in the same manner as an  
2164 application, but with time periods established by the  
2165 administrative law judge commensurate with the significance of  
2166 the modification requested.

2167        (d) As required by s. 403.511(5).



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~~(2) Petitions filed pursuant to paragraph (1) (c) shall be disposed of in the same manner as an application, but with time periods established by the administrative law judge commensurate with the significance of the modification requested.~~

~~(2)(3)~~ Any agreement or modification under this section must be in accordance with the terms of this act. No modification to a certification shall be granted that constitutes a variance from standards or regulations of the department applicable under any federally delegated or approved permit program, except as expressly allowed in such program.

Section 39. Section 403.517, Florida Statutes, is amended to read:

403.517 Supplemental applications for sites certified for ultimate site capacity.--

(1)(a) Supplemental ~~The department shall adopt rules governing the processing of supplemental applications may be submitted~~ for certification of the construction and operation of electrical power plants to be located at sites which have been previously certified for an ultimate site capacity pursuant to this act. Supplemental applications shall be limited to electrical power plants using the fuel type previously certified for that site. Such applications shall include all new directly associated facilities that support the construction and operation of the electrical power plant. ~~The rules adopted pursuant to this section shall include provisions for:~~

~~1. Prompt appointment of a designated administrative law judge.~~

~~2. The contents of the supplemental application.~~

~~3. Resolution of disputes as to the completeness and sufficiency of supplemental applications by the designated administrative law judge.~~

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~~4. Public notice of the filing of the supplemental applications.~~

~~5. Time limits for prompt processing of supplemental applications.~~

~~6. Final disposition by the board within 215 days of the filing of a complete supplemental application.~~

(b) The review shall use the same procedural steps and notices as for an initial application.

(c) The time limits for the processing of a complete supplemental application shall be designated by the department commensurate with the scope of the supplemental application, but shall not exceed any time limitation governing the review of initial applications for site certification pursuant to this act, it being the legislative intent to provide shorter time limitations for the processing of supplemental applications for electrical power plants to be constructed and operated at sites which have been previously certified for an ultimate site capacity.

~~(d)(e) Any time limitation in this section or in rules adopted pursuant to this section may be altered pursuant to s. 403.5095 by the designated administrative law judge upon stipulation between the department and the applicant, unless objected to by any party within 5 days after notice, or for good cause shown by any party. The parties to the proceeding shall adhere to the provisions of chapter 120 and this act in considering and processing such supplemental applications.~~

~~(2) Supplemental applications shall be reviewed as provided in ss. 403.507-403.511, except that the time limits provided in this section shall apply to such supplemental applications.~~

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2229       ~~(3)~~ The land use and zoning consistency determination of  
2230 s. 403.50665 hearing requirements of s. 403.508(1) and (2) shall  
2231 not be applicable to the processing of supplemental applications  
2232 pursuant to this section so long as:

2233       (a) The previously certified ultimate site capacity is not  
2234 exceeded; and

2235       (b) The lands required for the construction or operation  
2236 of the electrical power plant which is the subject of the  
2237 supplemental application are within the boundaries of the  
2238 previously certified site.

2239       ~~(4) For the purposes of this act, the term "ultimate site~~  
2240 ~~capacity" means the maximum generating capacity for a site as~~  
2241 ~~certified by the board.~~

2242       Section 40. Section 403.5175, Florida Statutes, is amended  
2243 to read:

2244       403.5175 Existing electrical power plant site  
2245 certification.--

2246       (1) An electric utility that owns or operates an existing  
2247 electrical power plant as defined in s. 403.503(12) may apply  
2248 for certification of an existing power plant and its site in  
2249 order to obtain all agency licenses necessary to ensure ~~assure~~  
2250 compliance with federal or state environmental laws and  
2251 regulation using the centrally coordinated, one-stop licensing  
2252 process established by this part. An application for site  
2253 certification under this section must be in the form prescribed  
2254 by department rule. Applications must be reviewed and processed  
2255 using the same procedural steps and notices as for an  
2256 application for a new facility in accordance with ss. 403.5064-  
2257 ~~403.5115~~, except that a determination of need by the Public  
2258 Service Commission is not required.

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(2) An application for certification under this section must include:

(a) A description of the site and existing power plant installations;

(b) A description of all proposed changes or alterations to the site or electrical power plant, including all new associated facilities that are the subject of the application;

(c) A description of the environmental and other impacts caused by the existing utilization of the site and directly associated facilities, and the operation of the electrical power plant that is the subject of the application, and of the environmental and other benefits, if any, to be realized as a result of the proposed changes or alterations if certification is approved and such other information as is necessary for the reviewing agencies to evaluate the proposed changes and the expected impacts;

(d) The justification for the proposed changes or alterations;

(e) Copies of all existing permits, licenses, and compliance plans authorizing utilization of the site and directly associated facilities or operation of the electrical power plant that is the subject of the application.

(3) The land use and zoning determination ~~hearing~~ requirements of s. 403.50665 ~~s. 403.508(1) and (2)~~ do not apply to an application under this section if the applicant does not propose to expand the boundaries of the existing site. If the applicant proposes to expand the boundaries of the existing site to accommodate portions of the plant or associated facilities, a land use and zoning determination shall be made ~~hearing must be held~~ as specified in s. 403.50665 ~~s. 403.508(1) and (2)~~; provided, however, that the sole issue for determination ~~through~~

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the ~~land use hearing~~ is whether the proposed site expansion is consistent and in compliance with the existing land use plans and zoning ordinances.

(4) In considering whether an application submitted under this section should be approved in whole, approved with appropriate conditions, or denied, the board shall consider whether, and to the extent to which the proposed changes to the electrical power plant and its continued operation under certification will:

(a) Comply with the provisions of s. 403.509(3).  
~~applicable nonprocedural requirements of agencies;~~

(b) Result in environmental or other benefits compared to current utilization of the site and operations of the electrical power plant if the proposed changes or alterations are undertaken.†

~~(c) Minimize, through the use of reasonable and available methods, the adverse effects on human health, the environment, and the ecology of the land and its wildlife and the ecology of state waters and their aquatic life; and~~

~~(d) Serve and protect the broad interests of the public.~~

(5) An applicant's failure to receive approval for certification of an existing site or an electrical power plant under this section is without prejudice to continued operation of the electrical power plant or site under existing agency licenses.

Section 41. Section 403.518, Florida Statutes, is amended to read:

403.518 Fees; disposition.--

~~(1)~~ The department shall charge the applicant the following fees, as appropriate, which, unless otherwise specified, shall be paid into the Florida Permit Fee Trust Fund:

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2321        (1)(a) A fee for a notice of intent pursuant to s.  
2322        403.5063, in the amount of \$2,500, to be submitted to the  
2323        department at the time of filing of a notice of intent. The  
2324        notice-of-intent fee shall be used and disbursed in the same  
2325        manner as the application fee.

2326        (2)(b) An application fee, which shall not exceed  
2327        \$200,000. The fee shall be fixed by rule on a sliding scale  
2328        related to the size, type, ultimate site capacity, or increase  
2329        in electrical generating capacity proposed by the application,  
2330        ~~or the number and size of local governments in whose~~  
2331        ~~jurisdiction the electrical power plant is located.~~

2332        (a)1. Sixty percent of the fee shall go to the department  
2333        to cover any costs associated with coordinating the review  
2334        ~~reviewing~~ and acting upon the application, to cover any field  
2335        services associated with monitoring construction and operation  
2336        of the facility, and to cover the costs of the public notices  
2337        published by the department.

2338        (b)2. The following percentages ~~Twenty percent of the fee~~  
2339        ~~or \$25,000, whichever is greater,~~ shall be transferred to the  
2340        Administrative Trust Fund of the Division of Administrative  
2341        Hearings of the Department of Management Services:-

2342        1. Five percent to compensate expenses from the initial  
2343        exercise of duties associated with the filing of an application.

2344        2. An additional 5 percent if a land use hearing is held  
2345        pursuant to s. 403.508.

2346        3. An additional 10 percent if a certification hearing is  
2347        held pursuant to s. 403.508.

2348        (c)1.3. Upon written request with proper itemized  
2349        accounting within 90 days after final agency action by the board  
2350        or withdrawal of the application, the agencies that prepared  
2351        reports pursuant to s. 403.507 or participated in a hearing

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2352 pursuant to s. 403.508 may submit a written request to the  
2353 department for reimbursement of expenses incurred during the  
2354 certification proceedings. The request shall contain an  
2355 accounting of expenses incurred which may include time spent  
2356 reviewing the application, ~~the department shall reimburse the~~  
2357 ~~Department of Community Affairs, the Fish and Wildlife~~  
2358 ~~Conservation Commission, and any water management district~~  
2359 ~~created pursuant to chapter 373, regional planning council, and~~  
2360 ~~local government in the jurisdiction of which the proposed~~  
2361 ~~electrical power plant is to be located, and any other agency~~  
2362 ~~from which the department requests special studies pursuant to~~  
2363 ~~s. 403.507(2)(a)7. Such reimbursement shall be authorized for~~  
2364 the preparation of any studies required of the agencies by this  
2365 act, and for agency travel and per diem to attend any hearing  
2366 held pursuant to this act, and for any agency or local  
2367 government's provision of notice of public meetings or hearings  
2368 required as a result of the application for certification  
2369 governments to participate in the proceedings. The department  
2370 shall review the request and verify that the expenses are valid.  
2371 Valid expenses shall be reimbursed; however, in the event the  
2372 amount of funds available for reimbursement allocation is  
2373 insufficient to provide for full compensation ~~complete~~  
2374 ~~reimbursement~~ to the agencies requesting reimbursement,  
2375 reimbursement shall be on a prorated basis.

2376 2. If the application review is held in abeyance for more  
2377 than 1 year, the agencies may submit a request for  
2378 reimbursement.

2379 (d)4. If any sums are remaining, the department shall  
2380 retain them for its use in the same manner as is otherwise  
2381 authorized by this act; provided, however, that if the

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certification application is withdrawn, the remaining sums shall be refunded to the applicant within 90 days after withdrawal.

(3)(a)(e) A certification modification fee, which shall not exceed \$30,000. The department shall establish rules for determining such a fee based on the equipment redesign, change in site size, type, increase in generating capacity proposed, or change in an associated linear facility location.

(b) The fee shall be submitted to the department with a ~~formal~~ petition for modification ~~to the department~~ pursuant to s. 403.516. This fee shall be established, disbursed, and processed in the same manner as the application fee in subsection (2) paragraph (b), except that the Division of Administrative Hearings shall not receive a portion of the fee unless the petition for certification modification is referred to the Division of Administrative Hearings for hearing. If the petition is so referred, only \$10,000 of the fee shall be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services. ~~The fee for a modification by agreement filed pursuant to s. 403.516(1)(b) shall be \$10,000 to be paid upon the filing of the request for modification. Any sums remaining after payment of authorized costs shall be refunded to the applicant within 90 days of issuance or denial of the modification or withdrawal of the request for modification.~~

(4)(d) A supplemental application fee, not to exceed \$75,000, to cover all reasonable expenses and costs of the review, processing, and proceedings of a supplemental application. This fee shall be established, disbursed, and processed in the same manner as the certification application fee in subsection (2) paragraph (b), ~~except that only \$20,000 of the fee shall be transferred to the Administrative Trust Fund of~~



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2413 ~~the Division of Administrative Hearings of the Department of~~  
2414 ~~Management Services.~~

2415 (5)(e) An existing site certification application fee, not  
2416 to exceed \$200,000, to cover all reasonable costs and expenses  
2417 of the review processing and proceedings for certification of an  
2418 existing power plant site under s. 403.5175. This fee must be  
2419 established, disbursed, and processed in the same manner as the  
2420 certification application fee in subsection (2) paragraph (b).

2421 ~~(2) Effective upon the date commercial operation begins,~~  
2422 ~~the operator of an electrical power plant certified under this~~  
2423 ~~part is required to pay to the department an annual operation~~  
2424 ~~license fee as specified in s. 403.0872(11) to be deposited in~~  
2425 ~~the Air Pollution Control Trust Fund.~~

2426 Section 42. Any application for electrical power plant  
2427 certification filed pursuant to ss. 403.501-403.518, Florida  
2428 Statutes, shall be processed under the provisions of the law  
2429 applicable at the time the application was filed, except that  
2430 the provisions relating to cancellation of the certification  
2431 hearing under s. 403.508(6), Florida Statutes, the provisions  
2432 relating to the final disposition of the application and  
2433 issuance of the written order by the secretary under s.  
2434 403.509(1)(a), Florida Statutes, and notice of the cancellation  
2435 of the certification hearing under s. 403.5115, Florida  
2436 Statutes, may apply to any application for electrical power  
2437 plant certification.

2438 Section 43. Section 403.519, Florida Statutes, is amended  
2439 to read:

2440 403.519 Exclusive forum for determination of need.--

2441 (1) On request by an applicant or on its own motion, the  
2442 commission shall begin a proceeding to determine the need for an

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electrical power plant subject to the Florida Electrical Power Plant Siting Act.

(2) The applicant ~~commission~~ shall publish a notice of the proceeding in a newspaper of general circulation in each county in which the proposed electrical power plant will be located. The notice shall be at least one-quarter of a page and published at least 21 ~~45~~ days prior to the scheduled date for the proceeding. The commission shall publish notice of the proceeding in the manner specified by chapter 120 at least 21 days prior to the scheduled date for the proceeding.

(3) The commission shall be the sole forum for the determination of this matter, which accordingly shall not be raised in any other forum or in the review of proceedings in such other forum. In making its determination, the commission shall take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, the need for fuel diversity and supply reliability, and whether the proposed plant is the most cost-effective alternative available. The commission shall also expressly consider the conservation measures taken by or reasonably available to the applicant or its members which might mitigate the need for the proposed plant and other matters within its jurisdiction which it deems relevant. The commission's determination of need for an electrical power plant shall create a presumption of public need and necessity and shall serve as the commission's report required by s. 403.507(4) ~~403.507(2)(a)2~~. An order entered pursuant to this section constitutes final agency action.

Section 44. Section 403.52, Florida Statutes, is amended to read:

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2473 403.52 Short title.--Sections 403.52-403.5365 may be cited  
2474 as the "Florida Electric Transmission Line Siting Act."

2475 Section 45. Section 403.521, Florida Statutes, is amended  
2476 to read:

2477 403.521 Legislative intent.--The legislative intent of  
2478 this act is to establish a centralized and coordinated licensing  
2479 ~~permitting~~ process for the location of electric transmission  
2480 line corridors and the construction, operation, and maintenance  
2481 of electric transmission lines, which are critical  
2482 infrastructure facilities. This necessarily involves several  
2483 broad interests of the public addressed through the subject  
2484 matter jurisdiction of several agencies. The Legislature  
2485 recognizes that electric transmission lines will have an effect  
2486 upon the reliability of the electric power system, the  
2487 environment, land use, and the welfare of the population.

2488 Recognizing the need to ensure electric power system reliability  
2489 and integrity, and in order to meet electric ~~electrical~~ energy  
2490 needs in an orderly and timely fashion, the centralized and  
2491 coordinated licensing ~~permitting~~ process established by this act  
2492 is intended to further the legislative goal of ensuring through  
2493 available and reasonable methods that the location of  
2494 transmission line corridors and the construction, operation, and  
2495 maintenance of electric transmission lines produce minimal  
2496 adverse effects on the environment and public health, safety,  
2497 and welfare ~~while not unduly conflicting with the goals~~  
2498 ~~established by the applicable local comprehensive plan~~. It is  
2499 the intent of this act to fully balance the need for  
2500 transmission lines with the broad interests of the public in  
2501 order to effect a reasonable balance between the need for the  
2502 facility as a means of providing reliable, economical, and  
2503 efficient electric ~~abundant low-cost electrical~~ energy and the

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2504 impact on the public and the environment resulting from the  
2505 location of the transmission line corridor and the construction,  
2506 operation, and maintenance of the transmission lines. The  
2507 Legislature intends that the provisions of chapter 120 apply to  
2508 this act and to proceedings under ~~pursuant to~~ it except as  
2509 otherwise expressly exempted by other provisions of this act.

2510 Section 46. Section 403.522, Florida Statutes, is amended  
2511 to read:

2512 403.522 Definitions relating to the Florida Electric  
2513 Transmission Line Siting Act.--As used in this act:

2514 (1) "Act" means the Florida Electric Transmission Line  
2515 Siting Act.

2516 (2) "Agency," as the context requires, means an official,  
2517 officer, commission, authority, council, committee, department,  
2518 division, bureau, board, section, or other unit or entity of  
2519 government, including a county, municipality, or other regional  
2520 or local governmental entity.

2521 (3) "Amendment" means a material change in information  
2522 provided by the applicant to the application for certification  
2523 made after the initial application filing.

2524 (4) "Applicant" means any electric utility that ~~which~~  
2525 applies for certification under ~~pursuant to the provisions of~~  
2526 this act.

2527 (5) "Application" means the documents required by the  
2528 department to be filed to initiate and support a certification  
2529 review and evaluation, including the initial document filing,  
2530 amendments, and responses to requests from the department for  
2531 additional data and information ~~proceeding~~. An electric utility  
2532 may file a comprehensive application encompassing all or a part  
2533 of one or more proposed transmission lines.

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(6) "Board" means the Governor and Cabinet sitting as the siting board.

(7) "Certification" means the approval by the board of the license for a corridor proper for certification pursuant to subsection (10) and the construction, operation, and maintenance of transmission lines within the ~~such~~ corridor with the ~~such~~ changes or conditions as the siting board deems appropriate. Certification shall be evidenced by a written order of the board.

(8) "Commission" means the Florida Public Service Commission.

(9) "Completeness" means that the application has addressed all applicable sections of the prescribed application format ~~and, but does not mean~~ that those sections are sufficient in comprehensiveness of data or in quality of information provided to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare the reports required by s. 403.526.

(10) "Corridor" means the proposed area within which a transmission line right-of-way, including maintenance and access roads, is to be located. The width of the corridor proposed for certification by an applicant or other party, at the option of the applicant, may be the width of the transmission line right-of-way, or a wider boundary, not to exceed a width of 1 mile. The area within the corridor in which a right-of-way may be located may be further restricted by a condition of certification. After all property interests required for the transmission line right-of-way and maintenance and access roads have been acquired by the applicant, the boundaries of the area certified shall narrow to only that land within the boundaries of the transmission line right-of-way. The corridors proper for

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certification shall be those addressed in the application, in amendments to the application filed under ~~pursuant to~~ s. 403.5275, and in notices of acceptance of proposed alternate corridors filed by an applicant and the department pursuant to s. 403.5271 for which the required ~~sufficient~~ information for the preparation of agency supplemental reports was filed.

(11) "Department" means the Department of Environmental Protection.

(12) "Electric utility" means cities and towns, counties, public utility districts, regulated electric companies, electric cooperatives, regional transmission organizations, operators of independent transmission systems, or other transmission organizations approved by the Federal Energy Regulatory Commission or the commission for the operation of transmission facilities, and joint operating agencies, or combinations thereof, engaged in, or authorized to engage in, the business of generating, transmitting, or distributing electric energy.

(13) "License" means a franchise, permit, certification, registration, charter, comprehensive plan amendment, development order, or permit as defined in chapters 163 and 380, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.

(14) "Licensee" means an applicant that has obtained a certification order for the subject project.

~~(14)~~ (15) "Local government" means a municipality or county in the jurisdiction of which the project is proposed to be located.

(16) "Maintenance and access roads" mean roads constructed within the transmission line right-of-way. Nothing in this act prohibits an applicant from constructing a road to support

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2596 construction, operation, or maintenance of the transmission line  
2597 that lies outside the transmission line right-of-way.

2598 (17)~~(15)~~ "Modification" means any change in the  
2599 certification order after issuance, including a change in the  
2600 conditions of certification.

2601 (18)~~(16)~~ "Nonprocedural requirements of agencies" means  
2602 any agency's regulatory requirements established by statute,  
2603 rule, ordinance, or comprehensive plan, excluding any provisions  
2604 prescribing forms, fees, procedures, or time limits for the  
2605 review or processing of information submitted to demonstrate  
2606 compliance with such regulatory requirements.

2607 (19)~~(17)~~ "Person" means an individual, partnership, joint  
2608 venture, private or public corporation, association, firm,  
2609 public service company, political subdivision, municipal  
2610 corporation, government agency, public utility district, or any  
2611 other entity, public or private, however organized.

2612 (20)~~(18)~~ "Preliminary statement of issues" means a listing  
2613 and explanation of those issues within the agency's jurisdiction  
2614 which are of major concern to the agency in relation to the  
2615 proposed electric ~~electrical~~ transmission line corridor.

2616 (21)~~(19)~~ "Regional planning council" means a regional  
2617 planning council as defined in s. 186.503(4) in the jurisdiction  
2618 of which the project is proposed to be located.

2619 ~~(20) "Sufficiency" means that the application is not only~~  
2620 ~~complete but that all sections are adequate in the~~  
2621 ~~comprehensiveness of data and in the quality of information~~  
2622 ~~provided to allow the department to determine whether the~~  
2623 ~~application provides the reviewing agencies adequate information~~  
2624 ~~to prepare the reports authorized by s. 403.526.~~

2625 (22)~~(21)~~ "Transmission line" or "electric transmission  
2626 line" means structures, maintenance and access roads, and all

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other facilities that need to be constructed, operated, or maintained for the purpose of conveying electric power ~~any electrical transmission line~~ extending from, but not including, an existing or proposed substation or power plant to, but not including, an existing or proposed transmission network or rights-of-way or substation to which the applicant intends to connect which defines the end of the proposed project and which is designed to operate at 230 kilovolts or more. ~~The starting point and ending point of a transmission line must be specifically defined by the applicant and must be verified by the commission in its determination of need. A transmission line includes structures and maintenance and access roads that need to be constructed for the project to become operational.~~ The transmission line may include, at the applicant's option, any proposed terminal or intermediate substations or substation expansions necessary to serve the transmission line.

~~(23)~~(22) "Transmission line right-of-way" means land necessary for the construction, operation, and maintenance of a transmission line. The typical width of the right-of-way shall be identified in the application. The right-of-way shall be located within the certified corridor and shall be identified by the applicant ~~subsequent to certification~~ in documents filed with the department before ~~prior to~~ construction.

~~(24)~~(23) "Water management district" means a water management district created pursuant to chapter 373 in the jurisdiction of which the project is proposed to be located.

Section 47. Section 403.523, Florida Statutes, is amended to read:

403.523 Department of Environmental Protection; powers and duties.--The department has ~~shall have~~ the following powers and duties:



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2658 (1) To adopt procedural rules pursuant to ss. 120.536(1)  
2659 and 120.54 to administer ~~implement the provisions of~~ this act  
2660 and to adopt or amend rules to implement the provisions of  
2661 subsection (10).

2662 (2) To prescribe the form and content of the public  
2663 notices and the form, content, and necessary supporting  
2664 documentation, and any required studies, for certification  
2665 applications. All ~~such~~ data and studies shall be related to the  
2666 jurisdiction of the agencies relevant to the application.

2667 (3) To receive applications for transmission line and  
2668 corridor certifications and initially determine the completeness  
2669 ~~and sufficiency~~ thereof.

2670 (4) To make or contract for studies of certification  
2671 applications. All ~~such~~ studies shall be related to the  
2672 jurisdiction of the agencies relevant to the application. For  
2673 studies in areas outside the jurisdiction of the department and  
2674 in the jurisdiction of another agency, the department may  
2675 initiate such studies, but only with the consent of the ~~such~~  
2676 agency.

2677 (5) To administer the processing of applications for  
2678 certification and ensure that the applications, including  
2679 postcertification reviews, are processed on an expeditious and  
2680 priority basis ~~as expeditiously as possible~~.

2681 (6) To collect and process ~~require~~ such fees as allowed by  
2682 this act.

2683 (7) To prepare a report and project ~~written~~ analysis as  
2684 required by s. 403.526.

2685 (8) To prescribe the means for monitoring the effects  
2686 arising from the location of the transmission line corridor and  
2687 the construction, operation, and maintenance of the transmission

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lines to assure continued compliance with the terms of the certification.

(9) To make a determination of acceptability of any alternate corridor proposed for consideration under ~~pursuant to~~ s. 403.5271.

(10) To set requirements that reasonably protect the public health and welfare from the electric and magnetic fields of transmission lines for which an application is filed under ~~after the effective date of~~ this act.

(11) To present rebuttal evidence on any issue properly raised at the certification hearing.

(12) To issue final orders after receipt of the administrative law judge's order relinquishing jurisdiction pursuant to s. 403.527(6).

(13) To act as clerk for the siting board.

(14) To administer and manage the terms and conditions of the certification order and supporting documents and records for the life of the facility.

(15) To issue emergency orders on behalf of the board for facilities licensed under this act.

Section 48. Section 403.524, Florida Statutes, is amended to read:

403.524 Applicability; ~~and~~ certification; exemptions.--

(1) ~~The provisions of~~ This act applies ~~apply~~ to each transmission line, except a transmission line certified under ~~pursuant to~~ the Florida Electrical Power Plant Siting Act.

(2) Except as provided in subsection (1), ~~no~~ construction of a ~~any~~ transmission line may not be undertaken without first obtaining certification under this act, but ~~the provisions of~~ this act does ~~do~~ not apply to:

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(a) Transmission lines for which development approval has been obtained under ~~pursuant to~~ chapter 380.

(b) Transmission lines that ~~which~~ have been exempted by a binding letter of interpretation issued under s. 380.06(4), or in which the Department of Community Affairs or its predecessor agency has determined the utility to have vested development rights within the meaning of s. 380.05(18) or s. 380.06(20).

(c) Transmission line development in which all construction is limited to established rights-of-way. Established rights-of-way include ~~such~~ rights-of-way established at any time for roads, highways, railroads, gas, water, oil, electricity, or sewage and any other public purpose rights-of-way. If an established transmission line right-of-way is used to qualify for this exemption, the transmission line right-of-way must have been established at least 5 years before notice of the start of construction under subsection (4) of the proposed transmission line. If an established transmission line right-of-way is relocated to accommodate a public project, the date the original transmission line right-of-way was established applies to the relocated transmission line right-of-way for purposes of this exemption. Except for transmission line rights of way, established rights of way include rights of way created before or after October 1, 1983. For transmission line rights of way, established rights of way include rights of way created before October 1, 1983.

(d) Unless the applicant has applied for certification under this act, transmission lines that ~~which~~ are less than 15 miles in length or are located in a single ~~which do not cross a~~ county within the state line, unless the applicant has elected to apply for certification under the act.

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2748 (3) The exemption of a transmission line under this act  
2749 does not constitute an exemption for the transmission line from  
2750 other applicable permitting processes under other provisions of  
2751 law or local government ordinances.

2752 (4) An electric A utility shall notify the department in  
2753 writing, before ~~prior to~~ the start of construction, of its  
2754 intent to construct a transmission line exempted under ~~pursuant~~  
2755 ~~to~~ this section. The ~~Such~~ notice is ~~shall be~~ only for  
2756 information purposes, and ~~no~~ action by the department is not  
2757 ~~shall be~~ required pursuant to the ~~such~~ notice. This notice may  
2758 be included in any submittal filed with the department before  
2759 the start of construction demonstrating that a new transmission  
2760 line complies with the applicable electric and magnetic field  
2761 standards.

2762 Section 49. Section 403.525, Florida Statutes, is amended  
2763 to read:

2764 403.525 ~~Appointment of~~ Administrative law judge;  
2765 appointment; powers and duties.--

2766 (1)(a) Within 7 days after receipt of an application,  
2767 whether complete or not, the department shall request the  
2768 Division of Administrative Hearings to designate an  
2769 administrative law judge to conduct the hearings required by  
2770 this act.

2771 (b) The division director shall designate an  
2772 administrative law judge to conduct the hearings required by  
2773 this act within 7 days after receipt of the request from the  
2774 department. Whenever practicable, the division director shall  
2775 assign an administrative law judge who has had prior experience  
2776 or training in this type of certification proceeding.

2777 (c) Upon being advised that an administrative law judge  
2778 has been designated, the department shall immediately file a

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copy of the application and all supporting documents with the administrative law judge, who shall docket the application.

(2) The administrative law judge has all powers and duties granted to administrative law judges under chapter 120 and by the laws and rules of the department.

Section 50. Section 403.5251, Florida Statutes, is amended to read:

403.5251 ~~Distribution of~~ Application; schedules.--

(1)(a) The formal date of the filing of the application for certification and commencement of the review process for certification is the date on which the applicant submits:

1. Copies of the application for certification in a quantity and format, electronic or otherwise as prescribed by rule, to the department and other agencies identified in s. 403.526(2).

2. The application fee as specified under s. 403.5365 to the department.

The department shall provide to the applicant and the Division of Administrative Hearings the names and addresses of any additional agencies or persons entitled to notice and copies of the application and amendments, if any, within 7 days after receiving the application for certification and the application fees.

(b) In the application, the starting point and ending point of a transmission line must be specifically defined by the applicant. Within 7 days after the filing of an application, the department shall provide the applicant and the Division of Administrative Hearings the names and addresses of those affected or other agencies entitled to notice and copies of the application and any amendments.

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2810 (2) Within 15 7 days after the formal date of the  
2811 application filing completeness has been determined, the  
2812 department shall prepare a proposed schedule of dates for  
2813 determination of completeness, submission of statements of  
2814 issues, ~~determination of sufficiency~~, and submittal of final  
2815 reports, ~~from affected and other agencies~~ and other significant  
2816 dates to be followed during the certification process, including  
2817 dates for filing notices of appearances to be a party under s.  
2818 403.527(2) pursuant to s. 403.527(4). This schedule shall be  
2819 provided by the department to the applicant, the administrative  
2820 law judge, and the agencies identified under ~~pursuant to~~  
2821 subsection (1). Within 7 days after the filing of this proposed  
2822 schedule, the administrative law judge shall issue an order  
2823 establishing a schedule for the matters addressed in the  
2824 department's proposed schedule and other appropriate matters, if  
2825 any.

2826 (3) ~~Within 7 days after completeness has been determined,~~  
2827 ~~the applicant shall distribute copies of the application to all~~  
2828 ~~agencies identified by the department pursuant to subsection~~  
2829 ~~(1).~~ Copies of changes and amendments to the application shall  
2830 be timely distributed by the applicant to all agencies and  
2831 parties who have received a copy of the application.

2832 (4) Notice of the filing of the application shall be made  
2833 in accordance with the requirements of s. 403.5363.

2834 Section 51. Section 403.5252, Florida Statutes, is amended  
2835 to read:

2836 403.5252 Determination of completeness.--

2837 (1)(a) Within 30 days after distribution of an  
2838 application, the affected agencies shall file a statement with  
2839 the department containing the recommendations of each agency

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2840 concerning the completeness of the application for  
2841 certification.

2842 (b) Within 7 15 days after receipt of the completeness  
2843 statements of each agency an application, the department shall  
2844 file a statement with the Division of Administrative Hearings,  
2845 and with the applicant, and with all parties declaring its  
2846 position with regard to the completeness, not the sufficiency,  
2847 of the application. The statement of the department shall be  
2848 based upon its consultation with the affected agencies.

2849 (2)(1) If the department declares the application to be  
2850 incomplete, the applicant, within 14 15 days after the filing of  
2851 the statement by the department, shall file with the Division of  
2852 Administrative Hearings, with all parties, and with the  
2853 department a statement:

2854 (a) A withdrawal of Agreeing with the statement of the  
2855 department and withdrawing the application;

2856 (b) Additional information necessary to make the  
2857 application complete. After the department first determines the  
2858 application to be incomplete, the time schedules under this act  
2859 are not tolled if the applicant makes the application complete  
2860 within the 14-day period. A subsequent finding by the department  
2861 that the application remains incomplete tolls the time schedules  
2862 under this act until the application is determined complete;  
2863 Agreeing with the statement of the department and agreeing to  
2864 amend the application without withdrawing it. The time schedules  
2865 referencing a complete application under this act shall not  
2866 commence until the application is determined complete; or

2867 (c) A statement contesting the department's determination  
2868 of incompleteness; or statement of the department.

2869 (d) A statement agreeing with the department and  
2870 requesting additional time to provide the information necessary

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2871 to make the application complete. If the applicant exercises  
2872 this option, the time schedules under this act are tolled until  
2873 the application is determined complete.

2874 (3)(a)(2) If the applicant contests the determination by  
2875 the department that an application is incomplete, the  
2876 administrative law judge shall schedule a hearing on the  
2877 statement of completeness. The hearing shall be held as  
2878 expeditiously as possible, but not later than 21 30 days after  
2879 the filing of the statement by the department. The  
2880 administrative law judge shall render a decision within 7 10  
2881 days after the hearing.

2882 (b) Parties to a hearing on the issue of completeness  
2883 shall include the applicant, the department, and any agency that  
2884 has jurisdiction over the matter in dispute. Any substantially  
2885 affected person who wishes to become a party to the hearing on  
2886 the issue of completeness must file a motion no later than 10  
2887 days before the date of the hearing.

2888 (c)(a) If the administrative law judge determines that the  
2889 application was not complete ~~as filed~~, the applicant shall  
2890 withdraw the application or make such additional submittals as  
2891 necessary to complete it. The time schedules referencing a  
2892 complete application under this act do shall not commence until  
2893 the application is determined complete.

2894 (d)(b) If the administrative law judge determines that the  
2895 application was complete at the time it was declared incomplete  
2896 ~~filed~~, the time schedules referencing a complete application  
2897 under this act shall commence upon such determination.

2898 (4) If the applicant provides additional information to  
2899 address the issues identified in the determination of  
2900 incompleteness, each affected agency may submit to the  
2901 department, no later than 14 days after the applicant files the



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2902 additional information, a recommendation on whether the agency  
2903 believes the application is complete. Within 21 days after  
2904 receipt of the additional information from the applicant  
2905 submitted under paragraphs (2)(b), (2)(d), or (3)(c) and  
2906 considering the recommendations of the affected agencies, the  
2907 department shall determine whether the additional information  
2908 supplied by an applicant makes the application complete. If the  
2909 department finds that the application is still incomplete, the  
2910 applicant may exercise any of the options specified in  
2911 subsection (2) as often as is necessary to resolve the dispute.

2912 Section 52. Section 403.526, Florida Statutes, is amended  
2913 to read:

2914 403.526 Preliminary statements of issues, reports, and  
2915 project analyses; and studies.--

2916 (1) Each affected agency that is required to file a report  
2917 which received an application in accordance with this section s.  
2918 403.5251(3) shall submit a preliminary statement of issues to  
2919 the department and all parties the applicant no later than 50 60  
2920 days after the filing distribution of the complete application.  
2921 Such statements of issues shall be made available to each local  
2922 government for use as information for public meetings held under  
2923 pursuant to s. 403.5272. The failure to raise an issue in this  
2924 preliminary statement of issues does ~~shall~~ not preclude the  
2925 issue from being raised in the agency's report.

2926 (2)(a) The following ~~affected~~ agencies shall prepare  
2927 reports as provided below and shall submit them to the  
2928 department and the applicant no later than ~~within~~ 90 days after  
2929 the filing distribution of the complete application:

2930 1. The department shall prepare a report as to the impact  
2931 of each proposed transmission line or corridor as it relates to  
2932 matters within its jurisdiction.

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2. Each water management district in the jurisdiction of which a proposed transmission line or corridor is to be located shall prepare a report as to the impact on water resources and other matters within its jurisdiction.

3. The Department of Community Affairs shall prepare a report containing recommendations which address the impact upon the public of the proposed transmission line or corridor, based on the degree to which the proposed transmission line or corridor is consistent with the applicable portions of the state comprehensive plan, emergency management, and other matters within its jurisdiction. The Department of Community Affairs may also comment on the consistency of the proposed transmission line or corridor with applicable strategic regional policy plans or local comprehensive plans and land development regulations.

4. The Fish and Wildlife Conservation Commission shall prepare a report as to the impact of each proposed transmission line or corridor on fish and wildlife resources and other matters within its jurisdiction.

5. Each local government shall prepare a report as to the impact of each proposed transmission line or corridor on matters within its jurisdiction, including the consistency of the proposed transmission line or corridor with all applicable local ordinances, regulations, standards, or criteria that apply to the proposed transmission line or corridor, including local comprehensive plans, zoning regulations, land development regulations, and any applicable local environmental regulations adopted pursuant to s. 403.182 or by other means. A ~~No~~ change by the responsible local government or local agency in local comprehensive plans, zoning ordinances, or other regulations made after the date required for the filing of the local government's report required by this section is not ~~shall be~~

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applicable to the certification of the proposed transmission line or corridor unless the certification is denied or the application is withdrawn.

6. Each regional planning council shall present a report containing recommendations that address the impact upon the public of the proposed transmission line or corridor based on the degree to which the transmission line or corridor is consistent with the applicable provisions of the strategic regional policy plan adopted under ~~pursuant to~~ chapter 186 and other impacts of each proposed transmission line or corridor on matters within its jurisdiction.

7. The Department of Transportation shall prepare a report as to the impact of the proposed transmission line or corridor on state roads, railroads, airports, aeronautics, seaports, and other matters within its jurisdiction.

8. The commission shall prepare a report containing its determination under s. 403.537 and the report may include the comments from the commission with respect to any other subject within its jurisdiction.

9. Any other agency, if requested by the department, shall also perform studies or prepare reports as to subjects within the jurisdiction of the agency which may potentially be affected by the proposed transmission line.

(b) Each report must ~~shall~~ contain:

1. A notice of any nonprocedural requirements not specifically listed in the application from which a variance, exemption, exception, or other relief is necessary in order for the proposed corridor to be certified. Failure to include the notice shall be treated as a waiver from the nonprocedural requirements of that agency.

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2994        2. A recommendation for approval or denial of the  
2995 application.

2996        3. The information on variances required by s. 403.531(2)  
2997 and proposed conditions of certification on matters within the  
2998 jurisdiction of each agency. For each condition proposed by an  
2999 agency, the agency shall list the specific statute, rule, or  
3000 ordinance, as applicable, which authorizes the proposed  
3001 condition.

3002        (c) Each reviewing agency shall initiate the activities  
3003 required by this section no later than 15 days after the  
3004 ~~complete~~ application is filed distributed. Each agency shall  
3005 keep the applicant and the department informed as to the  
3006 progress of its studies and any issues raised thereby.

3007        (d) When an agency whose agency head is a collegial body,  
3008 such as a commission, board, or council, is required to submit a  
3009 report pursuant to this section and is required by its own  
3010 internal procedures to have the report reviewed by its agency  
3011 head prior to finalization, the agency may submit to the  
3012 Department a draft version of the report by the deadline  
3013 indicated in subsection (a), and shall submit a final version of  
3014 the report after review by the agency head, and no later than 15  
3015 days after the deadline indicated in subsection (a).

3016        (e) Receipt of an affirmative determination of need from  
3017 the commission by the submittal deadline for agency reports  
3018 under paragraph (a) is a condition precedent to further  
3019 processing of the application.

3020        (3) The department shall prepare a project written  
3021 analysis containing ~~which contains~~ a compilation of agency  
3022 reports and summaries of the material contained therein which  
3023 shall be filed with the administrative law judge and served on  
3024 all parties no later than 115 ~~135~~ days after the application is

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3025 ~~filed complete application has been distributed to the affected~~  
3026 ~~agencies~~, and which shall include:

3027 (a) A statement indicating whether the proposed electric  
3028 transmission line will be in compliance with the rules of the  
3029 department and affected agencies.

3030 (b)~~(a)~~ The studies and reports required by this section  
3031 and s. 403.537.

3032 (c)~~(b)~~ Comments received from any other agency or person.

3033 (d)~~(c)~~ The recommendation of the department as to the  
3034 disposition of the application, of variances, exemptions,  
3035 exceptions, or other relief identified by any party, and of any  
3036 proposed conditions of certification which the department  
3037 believes should be imposed.

3038 (4) The failure of any agency to submit a preliminary  
3039 statement of issues or a report, or to submit its preliminary  
3040 statement of issues or report within the allowed time, ~~is shall~~  
3041 ~~not be~~ grounds for the alteration of any time limitation in this  
3042 act under ~~pursuant to~~ s. 403.528. ~~Neither~~ The failure to submit  
3043 a preliminary statement of issues or a report, or ~~nor~~ the  
3044 inadequacy of the preliminary statement of issues or report, are  
3045 not shall be grounds to deny or condition certification.

3046 Section 53. Section 403.527, Florida Statutes, is amended  
3047 to read:

3048 (Substantial rewording of section. See  
3049 s. 403.527, F.S., for present text.)

3050 403.527 Certification hearing, parties, participants.--

3051 (1)(a) No later than 145 days after the application is  
3052 filed, the administrative law judge shall conduct a  
3053 certification hearing pursuant to ss. 120.569 and 120.57 at a  
3054 central location in proximity to the proposed transmission line  
3055 or corridor.

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(b) Notice of the certification hearing and other public hearings provided for in this section and notice of the deadline for filing of notice of intent to be a party shall be made in accordance with the requirements of s. 403.5363.

(2)(a) Parties to the proceeding shall be:

1. The applicant.

2. The department.

3. The commission.

4. The Department of Community Affairs.

5. The Fish and Wildlife Conservation Commission.

6. The Department of Transportation.

7. Each water management district in the jurisdiction of which the proposed transmission line or corridor is to be located.

8. The local government.

9. The regional planning council.

(b) Any party listed in paragraph (a), other than the department or the applicant, may waive its right to participate in these proceedings. If any listed party fails to file a notice of its intent to be a party on or before the 30th day before the certification hearing, the party is deemed to have waived its right to be a party unless its participation would not prejudice the rights of any party to the proceeding.

(c) Notwithstanding the provisions of chapter 120 to the contrary, upon the filing with the administrative law judge of a notice of intent to be a party by an agency, corporation, or association described in subparagraphs 1. and 2. or a petition for intervention by a person described in subparagraph 3. no later than 30 days before the date set for the certification hearing, the following shall also be parties to the proceeding:

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3086        1. Any agency not listed in paragraph (a) as to matters  
3087 within its jurisdiction.

3088        2. Any domestic nonprofit corporation or association  
3089 formed, in whole or in part, to promote conservation of natural  
3090 beauty; to protect the environment, personal health, or other  
3091 biological values; to preserve historical sites; to promote  
3092 consumer interests; to represent labor, commercial, or  
3093 industrial groups; or to promote comprehensive planning or  
3094 orderly development of the area in which the proposed  
3095 transmission line or corridor is to be located.

3096        3. Any person whose substantial interests are affected and  
3097 being determined by the proceeding.

3098        (d) Any agency whose properties or works may be affected  
3099 shall be made a party upon the request of the agency or any  
3100 party to this proceeding.

3101        (3) (a) The order of presentation at the certification  
3102 hearing, unless otherwise changed by the administrative law  
3103 judge to ensure the orderly presentation of witnesses and  
3104 evidence, shall be:

3105            1. The applicant.

3106            2. The department.

3107            3. State agencies.

3108            4. Regional agencies, including regional planning councils  
3109 and water management districts.

3110            5. Local governments.

3111            6. Other parties.

3112        (b) When appropriate, any person may be given an  
3113 opportunity to present oral or written communications to the  
3114 administrative law judge. If the administrative law judge  
3115 proposes to consider such communications, all parties shall be

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3116 given an opportunity to cross-examine, challenge, or rebut the  
3117 communications.

3118 (4) One public hearing where members of the public who are  
3119 not parties to the certification hearing may testify shall be  
3120 held within the boundaries of each county, at the option of any  
3121 local government.

3122 (a) A local government shall notify the administrative law  
3123 judge and all parties not later than 21 days after the  
3124 application has been determined complete as to whether the local  
3125 government wishes to have a public hearing. If a filing for an  
3126 alternate corridor is accepted for consideration under s.  
3127 403.5271(1) by the department and the applicant, any newly  
3128 affected local government must notify the administrative law  
3129 judge and all parties not later than 10 days after the data  
3130 concerning the alternate corridor has been determined complete  
3131 as to whether the local government wishes to have such a public  
3132 hearing. The local government is responsible for providing the  
3133 location of the public hearing if held separately from the  
3134 certification hearing.

3135 (b) Within 5 days after notification, the administrative  
3136 law judge shall determine the date of the public hearing, which  
3137 shall be held before or during the certification hearing. If two  
3138 or more local governments within one county request a public  
3139 hearing, the hearing shall be consolidated so that only one  
3140 public hearing is held in any county. The location of a  
3141 consolidated hearing shall be determined by the administrative  
3142 law judge.

3143 (c) If a local government does not request a public  
3144 hearing within 21 days after the application has been determined  
3145 complete, persons residing within the jurisdiction of the local



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government may testify during that portion of the certification hearing at which public testimony is heard.

(5) At the conclusion of the certification hearing, the administrative law judge shall, after consideration of all evidence of record, issue a recommended order disposing of the application no later than 45 days after the transcript of the certification hearing and the public hearings is filed with the Division of Administrative Hearings.

(6)(a) No later than 25 days before the certification hearing, the department or the applicant may request that the administrative law judge cancel the certification hearing and relinquish jurisdiction to the department if all parties to the proceeding stipulate that there are no disputed issues of material fact to be raised at the certification hearing.

(b) The administrative law judge shall issue an order granting or denying the request within 5 days.

(c) If the administrative law judge grants the request, the department and the applicant shall publish notices of the cancellation of the certification hearing in accordance with s. 403.5363.

(d)1. If the administrative law judge grants the request, the department shall prepare and issue a final order in accordance with s. 403.529(1)(a).

2. Parties may submit proposed final orders to the department no later than 10 days after the administrative law judge issues an order relinquishing jurisdiction.

(7) The applicant shall pay those expenses and costs associated with the conduct of the hearing and the recording and transcription of the proceedings.

Section 54. Section 403.5271, Florida Statutes, is amended to read:

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403.5271 Alternate corridors.--

(1) No later than 45 ~~50~~ days before ~~prior to~~ the originally scheduled certification hearing, any party may propose alternate transmission line corridor routes for consideration under ~~pursuant to~~ the provisions of this act.

(a) A notice of a ~~any such~~ proposed alternate corridor must ~~shall~~ be filed with the administrative law judge, all parties, and any local governments in whose jurisdiction the alternate corridor is proposed. The ~~Such~~ filing must ~~shall~~ include the most recent United States Geological Survey 1:24,000 quadrangle maps specifically delineating the corridor boundaries, a description of the proposed corridor, and a statement of the reasons the proposed alternate corridor should be certified.

(b) 1. Within 7 days after receipt of the ~~such~~ notice, the applicant and the department shall file with the administrative law judge and all parties a notice of acceptance or rejection of a proposed alternate corridor for consideration. If the alternate corridor is rejected ~~either~~ by the applicant or the department, the certification hearing and the public hearings shall be held as scheduled. If both the applicant and the department accept a proposed alternate corridor for consideration, the certification hearing and the public hearings shall be rescheduled, if necessary.

2. If rescheduled, the certification hearing shall be held no more than 90 days after the previously scheduled certification hearing, unless the data submitted under paragraph (d) is determined to be incomplete, in which case the rescheduled certification hearing shall be held no more than 105 days after the previously scheduled certification hearing. If additional time is needed due to the alternate corridor crossing

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3208 a local government jurisdiction that was not previously  
3209 affected, ~~in which case~~ the remainder of the schedule listed  
3210 below shall be appropriately adjusted by the administrative law  
3211 judge to allow that local government to prepare a report  
3212 pursuant to s. 403.526(2)(a)5.

3213 (c) Notice of the filing of the alternate corridor, of the  
3214 revised time schedules, of the deadline for newly affected  
3215 persons and agencies to file notice of intent to become a party,  
3216 of the rescheduled hearing date, and of the proceedings pursuant  
3217 to s. 403.527(1)(b) and (c) shall be published in accordance  
3218 with s. 403.5363.

3219 (d) Within 21 ~~25~~ days after acceptance of an alternate  
3220 corridor by the department and the applicant, the party  
3221 proposing an alternate corridor shall have the burden of  
3222 providing all ~~additional~~ data to the agencies listed in s.  
3223 403.526(2) and newly affected agencies s. 403.526 necessary for  
3224 the preparation of a supplementary report on the proposed  
3225 alternate corridor.

3226 (e) 1. Reviewing agencies shall advise the department of  
3227 any issues concerning completeness no later than 15 days after  
3228 the submittal of the data required by paragraph (d). Within 22  
3229 days after receipt of the data, the department shall issue a  
3230 determination of completeness.

3231 2. If the department determines that the data required by  
3232 paragraph (d) is not complete, the party proposing the alternate  
3233 corridor must file such additional data to correct the  
3234 incompleteness. This additional data must be submitted within 14  
3235 days after the determination by the department.

3236 3. If the department, within 14 days after receiving the  
3237 additional data, determines that the data remains incomplete,  
3238 the incompleteness of the data is deemed a withdrawal of the

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3239 proposed alternate corridor. The department may make its  
3240 determination based on recommendations made by other affected  
3241 agencies. If the department determines within 15 days that this  
3242 additional data is insufficient, the party proposing the  
3243 alternate corridor shall file such additional data that corrects  
3244 the insufficiency within 15 days after the filing of the  
3245 department's determination. If such additional data is  
3246 determined insufficient, such insufficiency of data shall be  
3247 deemed a withdrawal of the proposed alternate corridor. The  
3248 party proposing an alternate corridor shall have the burden of  
3249 proof on the certifiability of the alternate corridor at the  
3250 certification hearing pursuant to s. 403.529(4). Nothing in this  
3251 act shall be construed as requiring the applicant or agencies  
3252 not proposing the alternate corridor to submit data in support  
3253 of such alternate corridor.

3254 (f) The agencies listed in s. 403.526(2) and any newly  
3255 affected agencies s. 403.526 shall file supplementary reports  
3256 with the applicant and the department which address addressing  
3257 the proposed alternate corridors no later than 24 60 days after  
3258 the additional data is submitted pursuant to paragraph (d) or  
3259 paragraph (e) is determined to be complete.

3260 (g) The agency reports on alternate corridors must include  
3261 all information required by s. 403.526(2) agencies shall submit  
3262 supplementary notice pursuant to s. 403.531(2) at the time of  
3263 filing of their supplemental report.

3264 (h) When an agency whose agency head is a collegial body,  
3265 such as a commission, board, or council, is required to submit a  
3266 report pursuant to this section and is required by its own  
3267 internal procedures to have the report reviewed by its agency  
3268 head prior to finalization, the agency may submit to the  
3269 Department a draft version of the report by the deadline

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3270 indicated in subsection (f), and shall submit a final version of  
3271 the report after review by the agency head, and no later than 7  
3272 days after the deadline indicated in subsection (f).

3273 (i)(h) The department shall file with the administrative  
3274 law judge, the applicant, and all parties a project prepare a  
3275 written analysis consistent with s. 403.526(3) no more than 16  
3276 at least 29 days after submittal of agency reports on prior to  
3277 the rescheduled certification hearing addressing the proposed  
3278 alternate corridor.

3279 (2) If the original certification hearing date is  
3280 rescheduled, the rescheduling shall not provide the opportunity  
3281 for parties to file additional alternate corridors to the  
3282 applicant's proposed corridor or any accepted alternate  
3283 corridor. However, an amendment to the application which changes  
3284 the alignment of the applicant's proposed corridor shall require  
3285 rescheduling of the certification hearing, if necessary, so as  
3286 to allow time for a party to file alternate corridors to the  
3287 realigned proposed corridor for which the application has been  
3288 amended. Any ~~such~~ alternate corridor proposal shall have the  
3289 same starting and ending points as the realigned portion of the  
3290 corridor proposed by the applicant's amendment, provided that  
3291 the administrative law judge for good cause shown may authorize  
3292 another starting or ending point in the area of the applicant's  
3293 amended corridor.

3294 (3)(a) Notwithstanding the rejection of a proposed  
3295 alternate corridor by the applicant or the department, any party  
3296 may present evidence at the certification hearing to show that a  
3297 corridor proper for certification does not satisfy the criteria  
3298 listed in s. 403.529 or that a rejected alternate corridor would  
3299 meet the criteria set forth in s. 403.529. No Evidence may not  
3300 shall be admitted at the certification hearing on any alternate

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corridor, unless the alternate corridor was proposed by the filing of a notice at least 45 ~~50~~ days before ~~prior to~~ the originally scheduled certification hearing pursuant to this section. Rejected alternate corridors shall be considered by the board as provided in s. 403.529(4) and (5).

(b) The party proposing an alternate corridor has the burden to prove that the alternate corridor can be certified at the certification hearing. This act does not require an applicant or agency that is not proposing the alternate corridor to submit data in support of the alternate corridor.

(4) If an alternate corridor is accepted by the applicant and the department pursuant to a notice of acceptance as provided in this subsection and the ~~such~~ corridor is ultimately determined to be the corridor that would meet the criteria set forth in s. 403.529(4) and (5), the board shall certify that corridor.

Section 55. Section 403.5272, Florida Statutes, is amended to read:

403.5272 ~~Local governments~~; Informational public meetings.--

(1) A local government whose jurisdiction is to be crossed by a proposed corridor ~~governments~~ may hold one informational public meeting ~~meetings~~ in addition to the hearings specifically authorized by this act on any matter associated with the transmission line proceeding. The ~~Such~~ informational public meeting may be conducted by the local government or the regional planning council and shall ~~meetings should~~ be held no later than 55 ~~60~~ days after the application is filed. The purpose of an informational public meeting is for the local government or regional planning council to further inform the ~~general~~ public about the transmission line proposed, obtain comments from the

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public, and formulate its recommendation with respect to the proposed transmission line.

(2) Informational public meetings shall be held solely at the option of each local government or regional planning council. It is the legislative intent that local governments or regional planning councils attempt to hold such public meetings. Parties to the proceedings under this act shall be encouraged to attend; however, a no party other than the applicant and the department is not shall-be required to attend the such informational public meetings hearings.

(3) A local government or regional planning council that intends to conduct an informational public meeting must provide notice of the meeting, with notice sent to all parties listed in s. 403.527(2)(a), not less than 5 days before the meeting.

(4)-(3) The failure to hold an informational public meeting or the procedure used for the informational public meeting are ~~shall not be~~ grounds for the alteration of any time limitation in this act under pursuant to s. 403.528 or grounds to deny or condition certification.

Section 56. Section 403.5275, Florida Statutes, is amended to read:

403.5275 Amendment to the application.--

(1) Any amendment made to the application before certification shall be sent by the applicant to the administrative law judge and to all parties to the proceeding.

(2) Any amendment to the application made before ~~prior to~~ certification shall be disposed of as part of the original certification proceeding. Amendment of the application may be considered "good cause" for alteration of time limits pursuant to s. 403.528.

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Section 57. Section 403.528, Florida Statutes, is amended to read:

403.528 Alteration of time limits.--

(1) Any time limitation in this act may be altered by the administrative law judge upon stipulation between the department and the applicant unless objected to by any party within 5 days after notice or for good cause shown by any party.

(2) A comprehensive application encompassing more than one proposed transmission line may be good cause for alternation of time limits.

Section 58. Section 403.529, Florida Statutes, is amended to read:

403.529 Final disposition of application.--

(1)(a) If the administrative law judge has granted a request to cancel the certification hearing and has relinquished jurisdiction to the department under s. 403.527(6), within 40 days thereafter, the secretary of the department shall act upon the application by written order in accordance with the terms of this act and state the reasons for issuance or denial.

(b) If the administrative law judge does not grant a request to cancel the certification hearing under the provisions of s. 403.527(6) within 60 ~~30~~ days after receipt of the administrative law judge's recommended order, the board shall act upon the application by written order, approving in whole, approving with such conditions as the board deems appropriate, or denying the certification and stating the reasons for issuance or denial.

(2) The issues that may be raised in any hearing before the board shall be limited to matters raised in the certification proceeding before the administrative law judge or raised in the recommended order of the administrative law judge.



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3393 All parties, or their representatives, or persons who appear  
3394 before the board shall be subject to ~~the provisions of s.~~  
3395 120.66.

3396 (3) If certification is denied, the board, or secretary if  
3397 applicable, shall set forth in writing the action the applicant  
3398 would have to take to secure the approval of the application ~~by~~  
3399 ~~the board~~.

3400 (4) In determining whether an application should be  
3401 approved in whole, approved with modifications or conditions, or  
3402 denied, the board, or secretary when applicable, shall consider  
3403 whether, and the extent to which, the location of the  
3404 transmission line corridor and the construction, operation, and  
3405 maintenance of the transmission line will:

3406 (a) Ensure electric power system reliability and  
3407 integrity;

3408 (b) Meet the electrical energy needs of the state in an  
3409 orderly, economical, and timely fashion;

3410 (c) Comply with applicable nonprocedural requirements of  
3411 agencies;

3412 (d) Be consistent with applicable provisions of local  
3413 government comprehensive plans, if any; and

3414 (e) Effect a reasonable balance between the need for the  
3415 transmission line as a means of providing reliable, economically  
3416 efficient electric energy, as determined by the commission,  
3417 under s. 403.537, ~~abundant low-cost electrical energy~~ and the  
3418 impact upon the public and the environment resulting from the  
3419 location of the transmission line corridor and the construction,  
3420 operation, and maintenance of the transmission lines.

3421 (5)(a) Any transmission line corridor certified by the  
3422 board, or secretary if applicable, shall meet the criteria of  
3423 this section. When more than one transmission line corridor is

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proper for certification under ~~pursuant to~~ s. 403.522(10) and meets the criteria of this section, the board, or secretary if applicable, shall certify the transmission line corridor that has the least adverse impact regarding the criteria in subsection (4), including costs.

(b) If the board, or secretary if applicable, finds that an alternate corridor rejected pursuant to s. 403.5271 meets the criteria of subsection (4) and has the least adverse impact regarding the criteria in subsection (4), including cost, of all corridors that meet the criteria of subsection (4), ~~then~~ the board, or secretary if applicable, shall deny certification or shall allow the applicant to submit an amended application to include the ~~such~~ corridor.

(c) If the board, or secretary if applicable, finds that two or more of the corridors that comply with ~~the provisions of~~ subsection (4) have the least adverse impacts regarding the criteria in subsection (4), including costs, and that the ~~such~~ corridors are substantially equal in adverse impacts regarding the criteria in subsection (4), including costs, ~~then~~ the board, or secretary if applicable, shall certify the corridor preferred by the applicant if the corridor is one proper for certification under ~~pursuant to~~ s. 403.522(10).

(6) The issuance or denial of the certification is ~~by the board shall be~~ the final administrative action required as to that application.

Section 59. Section 403.531, Florida Statutes, is amended to read:

403.531 Effect of certification.--

(1) Subject to the conditions set forth therein, certification shall constitute the sole license of the state and any agency as to the approval of the location of transmission

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line corridors and the construction, operation, and maintenance of transmission lines. The certification is ~~shall be~~ valid for the life of the transmission line, if ~~provided that~~ construction on, or condemnation or acquisition of, the right-of-way is commenced within 5 years after ~~of~~ the date of certification or such later date as may be authorized by the board.

(2)(a) The certification authorizes ~~shall authorize~~ the licensee ~~applicant~~ to locate the transmission line corridor and to construct and maintain the transmission lines subject only to the conditions of certification set forth in the ~~such~~ certification.

(b) The certification may include conditions that ~~which~~ constitute variances and exemptions from nonprocedural standards or rules ~~regulations~~ of the department or any other agency, which were expressly considered during the certification review ~~proceeding~~ unless waived by the agency as provided in s. 403.526 ~~below~~ and which otherwise would be applicable to the location of the proposed transmission line corridor or the construction, operation, and maintenance of the transmission lines. ~~Each party shall notify the applicant and other parties at the time scheduled for the filing of the agency reports of any nonprocedural requirements not specifically listed in the application from which a variance, exemption, exception, or other relief is necessary in order for the board to certify any corridor proposed for certification. Failure of such notification shall be treated as a waiver from the nonprocedural requirements of that agency.~~

(3)(a) The certification shall be in lieu of any license, permit, certificate, or similar document required by any state, regional, or local agency under ~~pursuant to~~, but not limited to, chapter 125, chapter 161, chapter 163, chapter 166, chapter 186,

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chapter 253, chapter 258, chapter 298, chapter 370, chapter 372,  
chapter 373, chapter 376, chapter 380, chapter 381, ~~chapter 387,~~  
chapter 403, chapter 404, the Florida Transportation Code, or 33  
U.S.C. s. 1341.

(b) On certification, any license, easement, or other  
interest in state lands, except those the title of which is  
vested in the Board of Trustees of the Internal Improvement  
Trust Fund, shall be issued by the appropriate agency as a  
ministerial act. The applicant shall ~~be required to~~ seek any  
necessary interest in state lands the title to which is vested  
in the Board of Trustees of the Internal Improvement Trust Fund  
from the board of trustees before, during, or after the  
certification proceeding, and certification may be made  
contingent upon issuance of the appropriate interest in realty.  
However, ~~neither~~ the applicant and ~~nor~~ any party to the  
certification proceeding may not directly or indirectly raise or  
relitigate any matter that ~~which~~ was or could have been an issue  
in the certification proceeding in any proceeding before the  
Board of Trustees of the Internal Improvement Trust Fund wherein  
the applicant is seeking a necessary interest in state lands,  
but the information presented in the certification proceeding  
shall be available for review by the board of trustees and its  
staff.

(4) This act does ~~shall~~ not in any way affect the  
ratemaking powers of the commission under chapter 366. This act  
does ~~shall also~~ not in any way affect the right of any local  
government to charge appropriate fees or require that  
construction be in compliance with the National Electrical  
Safety Code, as prescribed by the commission.

(5) A ~~No~~ term or condition of certification may not ~~shall~~  
be interpreted to preclude the postcertification exercise by any

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party of whatever procedural rights it may have under chapter 120, including those related to rulemaking proceedings.

Section 60. Section 403.5312, Florida Statutes, is amended to read:

403.5312 Filing ~~Recording~~ of notice of certified corridor route.--

(1) Within 60 days after certification of a directly associated transmission line under ~~pursuant to~~ ss. 403.501-403.518 or a transmission line corridor under ~~pursuant to~~ ss. 403.52-403.5365, the applicant shall file with the department ~~and~~, in accordance with s. 28.222, with the clerk of the circuit court for each county through which the corridor will pass, a notice of the certified route.

(2) The notice must ~~shall~~ consist of maps or aerial photographs in the scale of 1:24,000 which clearly show the location of the certified route and must ~~shall~~ state that the certification of the corridor will result in the acquisition of rights-of-way within the corridor. Each clerk shall record the filing in the official record of the county for the duration of the certification or until such time as the applicant certifies to the department and the clerk that all lands required for the transmission line rights-of-way within the corridor have been acquired within the ~~such~~ county, whichever is sooner.

(3) The recording of this notice does ~~shall~~ not constitute a lien, cloud, or encumbrance on real property.

Section 61. Section 403.5315, Florida Statutes, is amended to read:

403.5315 Modification of certification.--A certification may be modified after issuance in any one of the following ways:

(1) The board may delegate to the department the authority to modify specific conditions in the certification.

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(2) The licensee may file a petition for modification with the department or the department may initiate the modification upon its own initiative.

(a) A petition for modification must set forth:

1. The proposed modification;

2. The factual reasons asserted for the modification; and

3. The anticipated additional environmental effects of the proposed modification.

~~(b)~~(2) The department may modify the terms and conditions of the certification if no party objects in writing to the ~~such~~ modification within 45 days after notice by mail to the last address of record in the certification proceeding, and if no other person whose substantial interests will be affected by the modification objects in writing within 30 days after issuance of public notice.

(c) If objections are raised or the department denies the proposed modification, the licensee may file a request for hearing on the modification with the department. Such a request shall be handled pursuant to chapter 120.

(d) A request for hearing referred to the Division of Administrative Hearings shall be disposed of in the same manner as an application but with time periods established by the administrative law judge commensurate with the significance of the modification requested. ~~If objections are raised, the applicant may file a petition for modification pursuant to subsection (3).~~

~~(3) The applicant or the department may file a petition for modification with the department and the Division of Administrative Hearings setting forth:~~

~~(a) The proposed modification;~~

~~(b) The factual reasons asserted for the modification; and~~

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~~(c) The anticipated additional environmental effects of the proposed modification.~~

~~(4) Petitions filed pursuant to subsection (3) shall be disposed of in the same manner as an application but with time periods established by the administrative law judge commensurate with the significance of the modification requested.~~

Section 62. Section 403.5317, Florida Statutes, is created to read:

403.5317 Postcertification activities.--

(1)(a) If, subsequent to certification, a licensee proposes any material change to the application or prior amendments, the licensee shall submit to the department a written request for amendment and description of the proposed change to the application. The department shall, within 30 days after the receipt of the request for the amendment, determine whether the proposed change to the application requires a modification of the conditions of certification.

(b) If the department concludes that the change would not require a modification of the conditions of certification, the department shall notify, in writing, the licensee, all agencies, and all parties of the approval of the amendment.

(c) If the department concludes that the change would require a modification of the conditions of certification, the department shall notify the licensee that the proposed change to the application requires a request for modification under s. 403.5315.

(2) Postcertification submittals filed by a licensee with one or more agencies are for the purpose of monitoring for compliance with the issued certification. Each submittal must be reviewed by each agency on an expedited and priority basis because each facility certified under this act is a critical

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infrastructure facility. Postcertification review may not be completed more than 90 days after complete information for a segment of the certified transmission line is submitted to the reviewing agencies.

Section 63. Section 403.5363, Florida Statutes, is created to read:

403.5363 Public notices; requirements.--

(1)(a) The applicant shall arrange for the publication of the notices specified in paragraph (b).

1. The notices shall be published in newspapers of general circulation within counties crossed by the transmission line corridors proper for certification. The required newspaper notices for filing of an application and for the certification hearing shall be one-half page in size in a standard-size newspaper or a full page in a tabloid-size newspaper and published in a section of the newspaper other than the section for legal notices. These two notices must include a map generally depicting all transmission corridors proper for certification. A newspaper of general circulation shall be the newspaper within a county crossed by a transmission line corridor proper for certification which newspaper has the largest daily circulation in that county and has its principal office in that county. If the newspaper having the largest daily circulation has its principal office outside the county, the notices must appear in both the newspaper having the largest circulation in that county and in a newspaper authorized to publish legal notices in that county.

2. The department shall adopt rules specifying the content of the newspaper notices.



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3639 3. All notices published by the applicant shall be paid  
3640 for by the applicant and shall be in addition to the application  
3641 fee.

3642 (b) Public notices that must be published under this  
3643 section include:

3644 1. The notice of the filing of an application, which must  
3645 include a description of the proceedings required by this act.  
3646 The notice must describe the provisions of s. 403.531(1) and (2)  
3647 and give the date by which notice of intent to be a party or a  
3648 petition to intervene in accordance with s. 403.527(2) must be  
3649 filed. This notice must be published no more than 21 days after  
3650 the application is filed.

3651 2. The notice of the certification hearing and any other  
3652 public hearing permitted under s. 403.527. The notice must  
3653 include the date by which a person wishing to appear as a party  
3654 must file the notice to do so. The notice of the certification  
3655 hearing must be published at least 65 days before the date set  
3656 for the certification hearing.

3657 3. The notice of the cancellation of the certification  
3658 hearing, if applicable. The notice must be published at least 3  
3659 days before the date of the originally scheduled certification  
3660 hearing.

3661 4. The notice of the filing of a proposal to modify the  
3662 certification submitted under s. 403.5315, if the department  
3663 determines that the modification would require relocation or  
3664 expansion of the transmission line right-of-way or a certified  
3665 substation.

3666 (2) The proponent of an alternate corridor shall arrange  
3667 for the publication of the filing of the proposal for an  
3668 alternate corridor, the revised time schedules, the date by  
3669 which newly affected persons or agencies may file the notice of

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3670 intent to become a party, and the date of the rescheduled  
3671 hearing. A notice listed in this subsection must be published in  
3672 a newspaper of general circulation within the county or counties  
3673 crossed by the proposed alternate corridor and comply with the  
3674 content requirements set forth in paragraph (1)(a). The notice  
3675 must be published not less than 50 days before the rescheduled  
3676 certification hearing.

3677 (3) The department shall arrange for the publication of  
3678 the following notices in the manner specified by chapter 120:

3679 (a) The notice of the filing of an application and the  
3680 date by which a person intending to become a party must file a  
3681 petition to intervene or a notice of intent to be a party. The  
3682 notice must be published no later than 21 days after the  
3683 application has been filed.

3684 (b) The notice of any administrative hearing for  
3685 certification, if applicable. The notice must be published not  
3686 less than 65 days before the date set for a hearing, except that  
3687 notice for a rescheduled certification hearing after acceptance  
3688 of an alternative corridor must be published not less than 50  
3689 days before the date set for the hearing.

3690 (c) The notice of the cancellation of a certification  
3691 hearing, if applicable. The notice must be published not later  
3692 than 7 days before the date of the originally scheduled  
3693 certification hearing.

3694 (d) The notice of the hearing before the siting board, if  
3695 applicable.

3696 (e) The notice of stipulations, proposed agency action, or  
3697 a petition for modification.

3698 Section 64. Section 403.5365, Florida Statutes, is amended  
3699 to read:

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403.5365 Fees; disposition.--The department shall charge the applicant the following fees, as appropriate, which, unless otherwise specified, shall be paid into the Florida Permit Fee Trust Fund:

(1) An application fee.

(a) The application fee shall be of \$100,000, plus \$750 per mile for each mile of corridor in which the transmission line right-of-way is proposed to be located within an existing electric ~~electrical~~ transmission line right-of-way or within any existing right-of-way for any road, highway, railroad, or other aboveground linear facility, or \$1,000 per mile for each mile of electric transmission line corridor proposed to be located outside the ~~such~~ existing right-of-way.

(b)~~(a)~~ Sixty percent of the fee shall go to the department to cover any costs associated with coordinating the review of ~~reviewing~~ and acting upon the application and any costs for field services associated with monitoring construction and operation of the electric transmission line facility.

(c)~~(b)~~ The following percentage ~~Twenty percent of the fees specified under this section, except postcertification fees,~~ shall be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services:-

1. Five percent to compensate for expenses from the initial exercise of duties associated with the filing of an application.

2. An additional 10 percent if an administrative hearing under s. 403.527 is held.

(d)1.~~(c)~~ Upon written request with proper itemized accounting within 90 days after final agency action by the siting board or the department or the withdrawal of the

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3731 application, the agencies that prepared reports under s. 403.526  
3732 or s. 403.5271 or participated in a hearing under s. 403.527 or  
3733 s. 403.5271 may submit a written request to the department for  
3734 reimbursement of expenses incurred during the certification  
3735 proceedings. The request must contain an accounting of expenses  
3736 incurred, which may include time spent reviewing the  
3737 application, department shall reimburse the expenses and costs  
3738 of the Department of Community Affairs, the Fish and Wildlife  
3739 Conservation Commission, the water management district, regional  
3740 planning council, and local government in the jurisdiction of  
3741 which the transmission line is to be located. Such reimbursement  
3742 shall be authorized for the preparation of any studies required  
3743 of the agencies by this act, and for agency travel and per diem  
3744 to attend any hearing held under pursuant to this act, and for  
3745 the local government or regional planning council providing  
3746 additional notice of the informational public meeting. The  
3747 department shall review the request and verify whether a claimed  
3748 expense is valid. Valid expenses shall be reimbursed; however,  
3749 if to participate in the proceedings. In the event the amount of  
3750 funds available for reimbursement allocation is insufficient to  
3751 provide for full compensation complete reimbursement to the  
3752 agencies, reimbursement shall be on a prorated basis.

3753 2. If the application review is held in abeyance for more  
3754 than 1 year, the agencies may submit a request for reimbursement  
3755 under subparagraph 1.

3756 (e)(d) If any sums are remaining, the department shall  
3757 retain them for its use in the same manner as is otherwise  
3758 authorized by this section; ~~provided,~~ however, ~~that~~ if the  
3759 certification application is withdrawn, the remaining sums shall  
3760 be refunded to the applicant within 90 days after withdrawal.

3761 (2) An amendment fee.

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(a) If no corridor alignment change is proposed by the amendment, no amendment fee shall be charged.

(b) If a corridor alignment change under s. 403.5275 is proposed by the applicant, an additional fee of a minimum of \$2,000 and \$750 per mile shall be submitted to the department for use in accordance with this act.

(c) If an amendment is required to address issues, including alternate corridors under ~~pursuant to~~ s. 403.5271, raised by the department or other parties, no fee for the ~~such~~ amendment shall be charged.

(3) A certification modification fee.

(a) If no corridor alignment change is proposed by the licensee applicant, the modification fee shall be \$4,000.

(b) If a corridor alignment change is proposed by the licensee applicant, the fee shall be \$1,000 for each mile of realignment plus an amount not to exceed \$10,000 to be fixed by rule on a sliding scale based on the load-carrying capability and configuration of the transmission line for use in accordance with subsection (1) ~~(2)~~.

Section 65. Subsection (1) of section 403.537, Florida Statutes, is amended to read:

403.537 Determination of need for transmission line; powers and duties.--

(1)(a) Upon request by an applicant or upon its own motion, the Florida Public Service Commission shall schedule a public hearing, after notice, to determine the need for a transmission line regulated by the Florida Electric Transmission Line Siting Act, ss. 403.52-403.5365. The ~~Such~~ notice shall be published at least 21 ~~45~~ days before the date set for the hearing and shall be published by the applicant in at least one-quarter page size notice in newspapers of general circulation,

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3793 and by the commission in the manner specified in chapter 120 in  
3794 ~~the Florida Administrative Weekly~~, by giving notice to counties  
3795 and regional planning councils in whose jurisdiction the  
3796 transmission line could be placed, and by giving notice to any  
3797 persons who have requested to be placed on the mailing list of  
3798 the commission for this purpose. Within 21 days after receipt of  
3799 a request for determination by an applicant, the commission  
3800 shall set a date for the hearing. The hearing shall be held  
3801 pursuant to s. 350.01 within 45 days after the filing of the  
3802 request, and a decision shall be rendered within 60 days after  
3803 such filing.

3804 (b) The commission shall be the sole forum in which to  
3805 determine the need for a transmission line. The need for a  
3806 transmission line may not be raised or be the subject of review  
3807 in another proceeding.

3808 (c) ~~(b)~~ In the determination of need, the commission shall  
3809 take into account the need for electric system reliability and  
3810 integrity, the need for abundant, low-cost electrical energy to  
3811 assure the economic well-being of the residents ~~citizens~~ of this  
3812 state, the appropriate starting and ending point of the line,  
3813 and other matters within its jurisdiction deemed relevant to the  
3814 determination of need. The appropriate starting and ending  
3815 points of the electric transmission line must be verified by the  
3816 commission in its determination of need.

3817 (d) ~~(e)~~ The determination by the commission of the need for  
3818 the transmission line, as defined in s. 403.522(22) ~~s.~~  
3819 ~~403.522(21)~~, is binding on all parties to any certification  
3820 proceeding under ~~pursuant to~~ the Florida Electric Transmission  
3821 Line Siting Act and is a condition precedent to the conduct of  
3822 the certification hearing prescribed therein. An order entered  
3823 pursuant to this section constitutes final agency action.

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Section 66. Subsection (3) of section 373.441, Florida Statutes, is amended to read:

373.441 Role of counties, municipalities, and local pollution control programs in permit processing.--

(3) The department shall review environmental resource permit applications for electrical distribution and transmission lines and other facilities related to the production, transmission, and distribution of electricity which are not certified under ss. 403.52-403.5365, the Florida Electric Transmission Line Siting Act, regulated under this part.

Section 67. Subsection (30) of section 403.061, Florida Statutes, is amended to read:

403.061 Department; powers and duties.--The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to:

(30) Establish requirements by rule that reasonably protect the public health and welfare from electric and magnetic fields associated with existing 230 kV or greater electrical transmission lines, new 230 kV and greater electrical transmission lines for which an application for certification under the Florida Electric Transmission Line Siting Act, ss. 403.52-403.5365, is not filed, new or existing electrical transmission or distribution lines with voltage less than 230 kV, and substation facilities. Notwithstanding any other provision in this chapter or any other law of this state or political subdivision thereof, the department shall have exclusive jurisdiction in the regulation of electric and magnetic fields associated with all electrical transmission and distribution lines and substation facilities. However, nothing

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herein shall be construed as superseding or repealing the provisions of s. 403.523(1) and (10).

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 68. Paragraph (a) of subsection (3) of section 403.0876, Florida Statutes, is amended to read:

403.0876 Permits; processing.--

(3)(a) The department shall establish a special unit for permit coordination and processing to provide expeditious processing of department permits which the district offices are unable to process expeditiously and to provide accelerated processing of certain permits or renewals for economic and operating stability. The ability of the department to process applications under ~~pursuant to~~ this subsection in a more timely manner than allowed by subsections (1) and (2) is dependent upon the timely exchange of information between the applicant and the department and the intervention of outside parties as allowed by law. An applicant may request the processing of its permit application by the special unit if the application is from an area of high unemployment or low per capita income, is from a business or industry that is the primary employer within an area's labor market, or is in an industry with respect to which the complexities involved in the review of the application require special skills uniquely available in the headquarters office. The department may require the applicant to waive the 90-day time limitation for department issuance or denial of the permit once for a period not to exceed 90 days. The department may require a special fee to cover the direct cost of processing



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special applications in addition to normal permit fees and costs. The special fee may not exceed \$10,000 per permit required. Applications for renewal permits, but not applications for initial permits, required for facilities pursuant to the Electrical Power Plant Siting Act or the Florida Electric Transmission Line Siting Act may be processed under this subsection. Personnel staffing the special unit shall have lengthy experience in permit processing.

Section 69. Paragraph (b) of subsection (3) of section 403.809, Florida Statutes, is amended to read:

403.809 Environmental districts; establishment; managers; functions.--

(3)

(b) The processing of all applications for permits, licenses, certificates, and exemptions shall be accomplished at the district center or the branch office, except for those applications specifically assigned elsewhere in the department under s. 403.805 or to the water management districts under s. 403.812 and those applications assigned by interagency agreement as provided in this act. However, the secretary, as head of the department, may not delegate to district or subdistrict managers, water management districts, or any unit of local government the authority to act on the following types of permit applications:

1. Permits issued under s. 403.0885, except such permit issuance may be delegated to district managers.

2. Construction of major air pollution sources.

3. Certifications under the Florida Electrical Power Plant Siting Act or the Florida Electric Transmission Line Siting Act and the associated permit issued under s. 403.0885, if applicable.

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3916 4. Permits issued under s. 403.0885 to steam electric  
3917 generating facilities regulated pursuant to 40 C.F.R. part 423.

3918 5. Permits issued under s. 378.901.

3919 Section 70. Sections 403.5253 and 403.5369, Florida  
3920 Statutes, are repealed.

3921 Section 71. Section 403.885, Florida Statutes, is amended  
3922 to read:

3923 403.885 Water Projects ~~Stormwater management; wastewater~~  
3924 ~~management; and Water Restoration~~ Grant Program.--

3925 (1) The Department of Environmental Protection shall  
3926 administer a grant program to use funds transferred pursuant to  
3927 s. 212.20 to the Ecosystem Management and Restoration Trust Fund  
3928 or other moneys as appropriated by the Legislature for water  
3929 quality improvement, stormwater management, wastewater  
3930 management, and water restoration and other water projects as  
3931 specifically appropriated by the Legislature ~~project grants~~.  
3932 Eligible recipients of such grants include counties,  
3933 municipalities, water management districts, and special  
3934 districts that have legal responsibilities for water quality  
3935 improvement, water management, stormwater management, wastewater  
3936 management, lake and river water restoration projects, and.  
3937 drinking water projects ~~are not eligible for funding~~ pursuant to  
3938 this section.

3939 (2) The grant program shall provide for the evaluation of  
3940 annual grant proposals. The department shall evaluate such  
3941 proposals to determine if they:

3942 (a) Protect public health or ~~and~~ the environment.

3943 (b) Implement plans developed pursuant to the Surface  
3944 Water Improvement and Management Act created in part IV of  
3945 chapter 373, other water restoration plans required by law,  
3946 management plans prepared pursuant to s. 403.067, or other plans

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adopted by local government for water quality improvement and water restoration.

~~(3) In addition to meeting the criteria in subsection (2), annual grant proposals must also meet the following requirements:~~

~~(a) An application for a stormwater management project may be funded only if the application is approved by the water management district with jurisdiction in the project area. District approval must be based on a determination that the project provides a benefit to a priority water body.~~

~~(b) Except as provided in paragraph (c), an application for a wastewater management project may be funded only if:~~

~~1. The project has been funded previously through a line item in the General Appropriations Act; and~~

~~2. The project is under construction.~~

~~(c) An application for a wastewater management project that would qualify as a water pollution control project and activity in s. 403.1838 may be funded only if the project sponsor has submitted an application to the department for funding pursuant to that section.~~

~~(4) All project applicants must provide local matching funds as follows:~~

~~(a) An applicant for state funding of a stormwater management project shall provide local matching funds equal to at least 50 percent of the total cost of the project; and~~

~~(b) An applicant for state funding of a wastewater management project shall provide matching funds equal to at least 25 percent of the total cost of the project.~~

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3976 ~~The requirement for matching funds may be waived if the~~  
3977 ~~applicant is a financially disadvantaged small local government~~  
3978 ~~as defined in subsection (5).~~

3979 ~~(5) Each fiscal year, at least 20 percent of the funds~~  
3980 ~~available pursuant to this section shall be used for projects to~~  
3981 ~~assist financially disadvantaged small local governments. For~~  
3982 ~~purposes of this section, the term "financially disadvantaged~~  
3983 ~~small local government" means a municipality having a population~~  
3984 ~~of 7,500 or less, a county having a population of 35,000 or~~  
3985 ~~less, according to the latest decennial census and a per capita~~  
3986 ~~annual income less than the state per capita annual income as~~  
3987 ~~determined by the United States Department of Commerce, or a~~  
3988 ~~county in an area designated by the Governor as a rural area of~~  
3989 ~~critical economic concern pursuant to s. 288.0656. Grants made~~  
3990 ~~to these eligible local governments shall not require matching~~  
3991 ~~local funds.~~

3992 ~~(6) Each year, stormwater management and wastewater~~  
3993 ~~management projects submitted for funding through the~~  
3994 ~~legislative process shall be submitted to the department by the~~  
3995 ~~appropriate fiscal committees of the House of Representatives~~  
3996 ~~and the Senate. The department shall review the projects and~~  
3997 ~~must provide each fiscal committee with a list of projects that~~  
3998 ~~appear to meet the eligibility requirements under this grant~~  
3999 ~~program.~~

4000 Section 72. For the 2006-2007 fiscal year, the sum of  
4001 \$61,379 is appropriated from the General Revenue Fund to the  
4002 Department of Revenue for the purpose of administering the  
4003 energy-efficient products sales tax holiday.

4004 Section 73. For the 2006-2007 fiscal year, the sum of  
4005 \$8,587,000 in nonrecurring funds is appropriated from the  
4006 General Revenue Fund and \$6,413,000 in nonrecurring funds is

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appropriated from the Grants and Donations Trust Fund in the Department of Environmental Protection for the purpose of funding the Renewable Energy Technologies Grants program authorized in s. 377.804, Florida Statutes. From the General Revenue Funds, \$5,000,000 are contingent upon the coordination between the Department of Environmental Protection and the Department of Agriculture and Consumer Services pursuant to s. 377.804(6), Florida Statutes.

Section 74. For the 2006-2007 fiscal year, the sum of \$2.5 million in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Environmental Protection for the purpose of funding commercial and consumer solar incentives authorized in s. 377.806, Florida Statutes.

Section 75. This act shall take effect upon becoming a law.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

A bill to be entitled

An act relating to energy; providing legislative findings and intent; creating s. 366.92, F.S.; relating to the Florida renewable energy policy; providing intent; providing definitions; directing the Florida Public Service Commission to adopt goals for increasing the use of Florida renewable energy resources; authorizing the commission to adopt rules; creating s. 377.801, F.S.; creating the "Florida Renewable Energy Technologies and Energy Efficiency Act"; creating s. 377.802, F.S.; stating the purpose of the act; creating s. 377.803, F.S.; providing definitions; creating s. 377.804, F.S.; creating the Renewable Energy Technologies Grants Program;

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4038 providing program requirements and procedures, including  
4039 matching funds; requiring the Department of Environmental  
4040 Protection to adopt rules and coordinate with the  
4041 Department of Agriculture and Consumer Services; requiring  
4042 joint departmental approval for the funding of any  
4043 project; creating s. 377.805, F.S.; establishing an  
4044 energy-efficient products sales tax holiday; specifying a  
4045 period during which the sale of energy-efficient products  
4046 is exempt from certain tax; providing a limitation;  
4047 providing a definition; prohibiting purchase of products  
4048 by certain payment methods; providing that certain  
4049 purchases or attempts to purchase are unfair methods of  
4050 competition and punishable as such; creating s. 377.806,  
4051 F.S.; creating the Solar Energy System Incentives Program;  
4052 providing program requirements, procedures, and  
4053 limitations; requiring the Department of Environmental  
4054 Protection to adopt rules; creating s. 377.901, F.S.;  
4055 creating the Florida Energy Council within the Department  
4056 of Environmental Protection; providing purpose and  
4057 composition; providing for appointment of members and  
4058 terms; providing for reimbursement for travel expenses and  
4059 per diem; requiring the department to provide certain  
4060 services to the council; providing rulemaking authority;  
4061 amending s. 212.08, F.S.; providing definitions for the  
4062 terms "biodiesel," "ethanol," and "hydrogen fuel cells";  
4063 providing tax exemptions in the form of a rebate for the  
4064 sale or use of certain equipment, machinery, and other  
4065 materials for renewable energy technologies; providing  
4066 eligibility requirements and tax credit limits; directing  
4067 the Department of Revenue to adopt rules; directing the  
4068 Department of Environmental Protection to determine and

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4069 publish certain information relating to such exemptions;  
4070 providing for expiration of the exemption; amending s.  
4071 213.053, F.S.; authorizing the Department of Revenue to  
4072 share certain information with the Department of  
4073 Environmental Protection for specified purposes; amending  
4074 s. 220.02, F.S.; providing the order of application of the  
4075 renewable energy technologies investment tax credit;  
4076 creating s. 220.192, F.S.; providing definitions;  
4077 establishing a corporate tax credit for certain costs  
4078 related to renewable energy technologies; providing  
4079 eligibility requirements and credit limits; providing  
4080 certain authority to the Department of Environmental  
4081 Protection and the Department of Revenue; directing the  
4082 Department of Environmental Protection to determine and  
4083 publish certain information; providing for expiration of  
4084 the tax credit; creating s. 220.193, F.S.; creating the  
4085 Florida renewable energy production credit; providing  
4086 definitions; providing a tax credit for the production and  
4087 sale of renewable Florida energy; providing for the use  
4088 and transfer of the tax credit; authorizing the Department  
4089 of Revenue to adopt rules concerning the tax credit;  
4090 providing an effective date; amending s. 220.13, F.S.;  
4091 providing an addition to the definition of "adjusted  
4092 federal income"; amending s. 186.801, F.S.; revising the  
4093 provisions of electric utility 10-year site plans to  
4094 include the effect on fuel diversity; amending s. 366.04,  
4095 F.S.; revising the safety standards for public utilities;  
4096 amending s. 366.05, F.S.; authorizing the Public Service  
4097 Commission to adopt certain construction standards and  
4098 make certain determinations; directing the commission to  
4099 conduct a study and provide a report by a certain date;

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4100 amending s. 403.503, F.S.; revising and providing  
4101 definitions applicable to the Florida Electrical Power  
4102 Plant Siting Act; amending s. 403.504, F.S.; providing the  
4103 Department of Environmental Protection with additional  
4104 powers and duties relating to the Florida Electrical Power  
4105 Plant Siting Act; amending s. 403.5055, F.S.; revising  
4106 provisions for certain permits associated with  
4107 applications for electrical power plant certification;  
4108 amending s. 403.506, F.S.; revising provisions relating to  
4109 applicability and certification of certain power plants;  
4110 amending s. 403.5064, F.S.; revising provisions for  
4111 distribution of applications and schedules relating to  
4112 certification; amending s. 403.5065, F.S.; revising  
4113 provisions relating to the appointment of administrative  
4114 law judges and specifying their powers and duties;  
4115 amending s. 403.5066, F.S.; revising provisions relating  
4116 to the determination of completeness for certain  
4117 applications; creating s. 403.50663, F.S.; authorizing  
4118 certain local governments and regional planning councils  
4119 to hold an informational public meeting about a proposed  
4120 electrical power plant or associated facilities; providing  
4121 requirements and procedures therefor; creating s.  
4122 403.50665, F.S.; requiring local governments to file  
4123 certain land use determinations; providing requirements  
4124 and procedures therefor; repealing s. 403.5067, F.S.,  
4125 relating to the determination of sufficiency for certain  
4126 applications; amending s. 403.507, F.S.; revising required  
4127 preliminary statement provisions for affected agencies;  
4128 requiring a report as a condition precedent to the project  
4129 analysis and certification hearing; amending s. 403.508,  
4130 F.S.; revising provisions relating to land use and



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4131 certification hearings, including cancellation and  
4132 responsibility for payment of expenses and costs;  
4133 requiring certain notice; amending s. 403.509, F.S.;  
4134 revising provisions relating to the final disposition of  
4135 certain applications; providing requirements and  
4136 provisions with respect thereto; amending s. 403.511,  
4137 F.S.; revising provisions relating to the effect of  
4138 certification for the construction and operation of  
4139 proposed electrical power plants; providing that issuance  
4140 of certification meets certain coastal zone consistency  
4141 requirements; creating s. 403.5112, F.S.; requiring filing  
4142 of notice for certified corridor routes; providing  
4143 requirements and procedures with respect thereto; creating  
4144 s. 403.5113, F.S.; authorizing postcertification  
4145 amendments for power plant site certification  
4146 applications; providing requirements and procedures with  
4147 respect thereto; amending s. 403.5115, F.S.; requiring  
4148 certain public notice for activities relating to  
4149 electrical power plant site application, certification,  
4150 and land use determination; providing requirements and  
4151 procedures with respect thereto; directing the Department  
4152 of Environmental Protection to maintain certain lists and  
4153 provide copies of certain publications; amending s.  
4154 403.513, F.S.; revising provisions for judicial review of  
4155 appeals relating to electrical power plant site  
4156 certification; amending s. 403.516, F.S.; revising  
4157 provisions relating to modification of certification for  
4158 electrical power plant sites; amending s. 403.517, F.S.;  
4159 revising provisions relating to supplemental applications  
4160 for sites certified for ultimate site capacity; amending  
4161 s. 403.5175, F.S.; revising provisions relating to

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4162 existing electrical power plant site certification;  
4163 revising the procedure for reviewing and processing  
4164 applications; requiring additional information to be  
4165 included in certain applications; amending s. 403.518,  
4166 F.S.; revising the allocation of proceeds from certain  
4167 fees collected; providing for reimbursement of certain  
4168 expenses; directing the Department of Environmental  
4169 Protection to establish rules for determination of certain  
4170 fees; eliminating certain operational license fees;  
4171 providing for the application, processing, approval, and  
4172 cancellation of electrical power plant certification;  
4173 amending s. 403.519, F.S.; directing the Public Service  
4174 Commission to consider fuel diversity and reliability in  
4175 certain determinations; amending s. 403.52, F.S.; changing  
4176 the short title to the "Florida Electric Transmission Line  
4177 Siting Act"; amending s. 403.521, F.S.; revising  
4178 legislative intent; amending s. 403.522, F.S.; revising  
4179 definitions; defining the terms "licensee" and  
4180 "maintenance and access roads"; amending s. 403.523, F.S.;  
4181 revising powers and duties of the Department of  
4182 Environmental Protection; requiring the department to  
4183 collect and process fees, to prepare a project analysis,  
4184 to act as clerk for the siting board, and to administer  
4185 and manage the terms and conditions of the certification  
4186 order and supporting documents and records; amending s.  
4187 403.524, F.S.; revising provisions for applicability,  
4188 certification, and exemptions under the act; revising  
4189 provisions for notice by an electric utility of its intent  
4190 to construct an exempt transmission line; amending s.  
4191 403.525, F.S.; providing for powers and duties of the  
4192 administrative law judge designated by the Division of

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4193 Administrative Hearings to conduct the required hearings;  
4194 amending s. 403.5251, F.S.; revising application  
4195 procedures and schedules; providing for the formal date of  
4196 filing an application for certification and commencement  
4197 of the certification review process; requiring the  
4198 department to prepare a proposed schedule of dates for  
4199 determination of completeness and other significant dates  
4200 to be followed during the certification process; providing  
4201 for the formal date of application distribution; requiring  
4202 the applicant to provide notice of filing the application;  
4203 amending s. 403.5252, F.S.; revising timeframes and  
4204 procedures for determination of completeness of the  
4205 application; requiring the department to consult with  
4206 affected agencies; revising requirements for the  
4207 department to file a statement of its determination of  
4208 completeness with the Division of Administrative Hearings,  
4209 the applicant, and all parties within a certain time after  
4210 distribution of the application; revising requirements for  
4211 the applicant to file a statement with the department, the  
4212 division, and all parties, if the department determines  
4213 the application is not complete; providing for the  
4214 statement to notify the department whether the information  
4215 will be provided; revising timeframes and procedures for  
4216 contests of the determination by the department; providing  
4217 for parties to a hearing on the issue of completeness;  
4218 amending s. 403.526, F.S.; revising criteria and  
4219 procedures for preliminary statements of issues, reports,  
4220 and studies; revising timeframes; requiring that the  
4221 preliminary statement of issues from each affected agency  
4222 be submitted to the department and the applicant; revising  
4223 criteria for the Department of Community Affairs' report;

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4224 requiring the Department of Transportation, the Public  
4225 Service Commission, and any other affected agency to  
4226 prepare a project report; revising required content of the  
4227 report; providing for notice of any nonprocedural  
4228 requirements not listed in the application; providing for  
4229 failure to provide such notification; providing for a  
4230 recommendation for approval or denial of the application;  
4231 providing that receipt of an affirmative determination of  
4232 need is a condition precedent to further processing of the  
4233 application; requiring that the department prepare a  
4234 project analysis to be filed with the administrative law  
4235 judge and served on all parties within a certain time;  
4236 amending s. 403.527, F.S.; revising procedures and  
4237 timeframes for the certification hearing conducted by the  
4238 administrative law judge; revising provisions for notices  
4239 and publication of notices, public hearings held by local  
4240 governments, testimony at the public-hearing portion of  
4241 the certification hearing, the order of presentations at  
4242 the hearing, and consideration of certain communications  
4243 by the administrative law judge; requiring the applicant  
4244 to pay certain expenses and costs; requiring the  
4245 administrative law judge to issue a recommended order  
4246 disposing of the application; requiring that certain  
4247 notices be made in accordance with specified requirements  
4248 and within a certain time; requiring the Department of  
4249 Transportation to be a party to the proceedings; providing  
4250 for the administrative law judge to cancel the  
4251 certification hearing and relinquish jurisdiction to the  
4252 Department of Environmental Protection upon request by the  
4253 applicant or the department; requiring the department and  
4254 the applicant to publish notice of such cancellation;

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4255 providing for parties to submit proposed recommended  
4256 orders to the department when the certification hearing  
4257 has been canceled; providing that the department prepare a  
4258 recommended order for final action by the siting board  
4259 when the hearing has been canceled; amending s. 403.5271,  
4260 F.S.; revising procedures and timeframes for consideration  
4261 of proposed alternate corridors; revising notice  
4262 requirements; providing for notice of the filing of the  
4263 alternate corridor and revised time schedules; providing  
4264 for notice to agencies newly affected by the proposed  
4265 alternate corridor; requiring the person proposing the  
4266 alternate corridor to provide all data to the agencies  
4267 within a certain time; providing for a determination by  
4268 the department that the data is not complete; providing  
4269 for withdrawal of the proposed alternate corridor upon  
4270 such determination; requiring that agencies file reports  
4271 with the applicant and the department which address the  
4272 proposed alternate corridor; requiring that the department  
4273 file with the administrative law judge, the applicant, and  
4274 all parties a project analysis of the proposed alternate  
4275 corridor; providing that the party proposing an alternate  
4276 corridor has the burden of proof concerning the  
4277 certifiability of the alternate corridor; amending s.  
4278 403.5272, F.S.; revising procedures for informational  
4279 public meetings; providing for informational public  
4280 meetings held by regional planning councils; revising  
4281 timeframes; amending s. 403.5275, F.S.; revising  
4282 provisions for amendment to the application prior to  
4283 certification; amending s. 403.528, F.S.; providing that a  
4284 comprehensive application encompassing more than one  
4285 proposed transmission line may be good cause for altering

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4286 established time limits; amending s. 403.529, F.S.;

4287 revising provisions for final disposition of the

4288 application by the siting board; providing for the

4289 administrative law judge's or department's recommended

4290 order; amending s. 403.531, F.S.; revising provisions for

4291 conditions of certification; amending s. 403.5312, F.S.;

4292 requiring the applicant to file notice of a certified

4293 corridor route with the department; amending s. 403.5315,

4294 F.S.; revising the circumstances under which a

4295 certification may be modified after the certification has

4296 been issued; providing for procedures if objections are

4297 raised to the proposed modification; creating s. 403.5317,

4298 F.S.; providing procedures for changes proposed by the

4299 licensee after certification; requiring the department to

4300 determine within a certain time if the proposed change

4301 requires modification of the conditions of certification;

4302 requiring notice to the licensee, all agencies, and all

4303 parties of changes that are approved as not requiring

4304 modification of the conditions of certification; creating

4305 s. 403.5363, F.S.; requiring publication of certain

4306 notices by the applicant, the proponent of an alternate

4307 corridor, and the department; requiring the department to

4308 adopt rules specifying the content of such notices;

4309 amending s. 403.5365, F.S.; revising application fees and

4310 the distribution of fees collected; revising procedures

4311 for reimbursement of local governments and regional

4312 planning organizations; amending s. 403.537, F.S.;

4313 revising the schedule for notice of a public hearing by

4314 the Public Service Commission in order to determine the

4315 need for a transmission line; providing that the

4316 commission is the sole forum in which to determine the

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4317 need for a transmission line; amending ss. 373.441,  
4318 403.061, 403.0876, and 403.809, F.S.; conforming  
4319 terminology to changes made by the act; repealing ss.  
4320 403.5253 and 403.5369, F.S., relating to determination of  
4321 sufficiency of application or amendment to the application  
4322 and the application of the act to applications filed  
4323 before a certain date; amending 403.885, F.S.; revising  
4324 provisions and requirements relating to the stormwater  
4325 management, wastewater management, and water restoration  
4326 grants program; providing for appropriations; providing an  
4327 effective date.

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Amendment No. (for drafter's use only)

Bill No. 1473

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Commerce Council

Representative Attkisson offered the following:

**Amendment to Amendment ( 1 ) by Representative Hasner (with title amendments)**

Between lines 2470 and 2471 insert:

(4) In making its determination on a proposed electrical power plant using nuclear materials as fuel, the commission shall hold a hearing within 90 days after the filing of the petition to determine need and shall issue an order granting or denying the petition within 135 days after the date of the filing of the petition. The commission shall be the sole forum for the determination of this matter and the issues addressed in the petition, which accordingly shall not be reviewed in any other forum, or in the review of proceedings in such other forum. In making its determination to either grant or deny the petition, the commission shall consider the need for electric system reliability and integrity, including fuel diversity, the need for base-load generating capacity, and the need for adequate electricity at a reasonable cost.

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(a) The applicant's petition shall include:

1. A description of the need for the generation capacity.

2. A description of how the proposed nuclear power plant will enhance the reliability of electric power production within the state by improving the balance of power plant fuel diversity and reducing Florida's dependence on fuel oil and natural gas.

3. A description of and a nonbinding estimate of the cost of the nuclear power plant.

4. The annualized base revenue requirement for the first 12 months of operation of the nuclear power plant.

(b) In making its determination, the commission shall take into account matters within its jurisdiction, which it deems relevant, including whether the nuclear power plant will:

1. Provide needed base-load capacity.

2. Enhance the reliability of electric power production within the state by improving the balance of power plant fuel diversity and reducing Florida's dependence on fuel oil and natural gas.

3. Provide the most cost-effective source of power, taking into account the need to improve the balance of fuel diversity, reduce Florida's dependence on fuel oil and natural gas, reduce air emission compliance costs, and contribute to the long-term stability and reliability of the electric grid.

(c) No provision of rule 25-22.082, Florida Administrative Code, shall be applicable to a nuclear power plant sited under this act, including provisions for cost recovery, and an applicant shall not otherwise be required to secure competitive proposals for power supply prior to making application under this act or receiving a determination of need from the commission.

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52       (d) The commission's determination of need for a nuclear  
53 power plant shall create a presumption of public need and  
54 necessity and shall serve as the commission's report required by  
55 s. 403.507(4)(a). An order entered pursuant to this section  
56 constitutes final agency action. Any petition for  
57 reconsideration of a final order on a petition for need  
58 determination shall be filed within 5 days after the date of  
59 such order. The commission's final order, including any order on  
60 reconsideration, shall be reviewable on appeal in the Florida  
61 Supreme Court. Inasmuch as delay in the determination of need  
62 will delay siting of a nuclear power plant or diminish the  
63 opportunity for savings to customers under the federal Energy  
64 Policy Act of 2005, the Supreme Court shall proceed to hear and  
65 determine the action as expeditiously as practicable and give  
66 the action precedence over matters not accorded similar  
67 precedence by law.

68       (e) After a petition for determination of need for a  
69 nuclear power plant has been granted, the right of a utility to  
70 recover any costs incurred prior to commercial operation,  
71 including, but not limited to, costs associated with the siting,  
72 design, licensing, or construction of the plant, shall not be  
73 subject to challenge unless and only to the extent the  
74 commission finds, based on a preponderance of the evidence  
75 adduced at a hearing before the commission under s. 120.57, that  
76 certain costs were imprudently incurred. Proceeding with the  
77 construction of the nuclear power plant following an order by  
78 the commission approving the need for the nuclear power plant  
79 under this act shall not constitute or be evidence of  
80 imprudence. Imprudence also shall not include any cost increases  
81 due to events beyond the utility's control. Further, a utility's

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right to recover costs associated with a nuclear power plant may not be raised in any other forum or in the review of proceedings in such other forum. Costs incurred prior to commercial operation shall be recovered pursuant to chapter 366.

Section 44. Section 366.93, Florida Statutes, is created to read:

366.93 Cost recovery for the siting, design, licensing, and construction of nuclear power plants.--

(1) As used in this section, the term:

(a) "Cost" includes, but is not limited to, all capital investments, including rate of return, any applicable taxes, and all expenses, including operation and maintenance expenses, related to or resulting from the siting, licensing, design, construction, or operation of the nuclear power plant.

(b) "Electric utility" or "utility" has the same meaning as that provided in s. 366.8255(1)(a).

(c) "Nuclear power plant" or "plant" is an electrical power plant as defined in s. 403.503(12) that uses nuclear materials for fuel.

(d) "Preconstruction" is that period of time after a site has been selected through and including the date the utility completes site clearing work. Preconstruction costs shall be afforded deferred accounting treatment and shall accrue a carrying charge equal to the utility's allowance for funds during construction (AFUDC) rate until recovered in rates.

(2) Within 6 months after the enactment of this act, the commission shall establish, by rule, alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of a nuclear power plant. Such mechanisms shall be designed to promote utility investment

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112 in nuclear power plants and allow for the recovery in rates all  
113 prudently incurred costs, and shall include, but are not limited  
114 to:

115 (a) Recovery through the capacity cost recovery clause of  
116 any preconstruction costs.

117 (b) Recovery through an incremental increase in the  
118 utility's capacity cost recovery clause rates of the carrying  
119 costs on the utility's projected construction cost balance  
120 associated with the nuclear power plant. To encourage investment  
121 and provide certainty, for nuclear power plant need petitions  
122 submitted on or before December 31, 2010, associated carrying  
123 costs shall be equal to the pretax AFUDC in effect upon this act  
124 becoming law. For nuclear power plants for which need petitions  
125 are submitted after December 31, 2010, the utility's existing  
126 pretax AFUDC rate is presumed to be appropriate unless  
127 determined otherwise by the commission in the determination of  
128 need for the nuclear power plant.

129 (3) After a petition for determination of need is granted,  
130 a utility may petition the commission for cost recovery as  
131 permitted by this section and commission rules.

132 (4) When the nuclear power plant is placed in commercial  
133 service, the utility shall be allowed to increase its base rate  
134 charges by the projected annual revenue requirements of the  
135 nuclear power plant based on the jurisdictional annual revenue  
136 requirements of the plant for the first 12 months of operation.  
137 The rate of return on capital investments shall be calculated  
138 using the utility's rate of return last approved by the  
139 commission prior to the commercial inservice date of the nuclear  
140 power plant. If any existing generating plant is retired as a  
141 result of operation of the nuclear power plant, the commission

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142 shall allow for the recovery, through an increase in base rate  
143 charges, of the net book value of the retired plant over a  
144 period not to exceed 5 years.

145 (5) The utility shall report to the commission annually  
146 the budgeted and actual costs as compared to the estimated  
147 inservice cost of the nuclear power plant provided by the  
148 utility pursuant to s. 403.519(4), until the commercial  
149 operation of the nuclear power plant. The utility shall provide  
150 such information on an annual basis following the final order by  
151 the commission approving the determination of need for the  
152 nuclear power plant, with the understanding that some costs may  
153 be higher than estimated and other costs may be lower.

154 (6) In the event the utility elects not to complete or is  
155 precluded from completing construction of the nuclear power  
156 plant, the utility shall be allowed to recover all prudent  
157 preconstruction and construction costs incurred following the  
158 commission's issuance of a final order granting a determination  
159 of need for the nuclear power plant. The utility shall recover  
160 such costs through the capacity cost recovery clause over a  
161 period equal to the period during which the costs were incurred  
162 or 5 years, whichever is greater. The unrecovered balance during  
163 the recovery period will accrue interest at the utility's  
164 weighted average cost of capital as reported in the commission's  
165 earnings surveillance reporting requirement for the prior year.

166  
167 ===== T I T L E A M E N D M E N T =====

168 Remove line 4175 and insert:

169 certain determinations; providing requirements and  
170 procedures for determination of need for certain power  
171 plants; providing an exemption from purchased power supply

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172 bid rules under certain circumstances; creating s. 366.93,  
173 F.S.; providing definitions; requiring the Public Service  
174 Commission to implement rules related to nuclear power  
175 plant cost recovery; requiring a report; amending s.  
176 403.52.F.S.; changing

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